MONTANA ADMINISTRATIVE REGISTER

2021 ISSUE NO. 22
NOVEMBER 19, 2021
PAGES 1569-1712

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-63-621 (State Lottery and Sports Wagering Commission) Amended Notice of Proposed Amendment - Definitions - Places of Sale - Applications and Fees - Commission - Revocation or Suspension of License - Prizes. No Public Hearing Contemplated. 1569-1572

STATE AUDITOR, Office of, Title 6

6-266 (Commissioner of Securities and Insurance) Notice of Proposed Amendment and Repeal - Rates and Premiums - Payment or Benefits. No Public Hearing Contemplated. 1573-1575

EDUCATION, Title 10

10-54-291 (Board of Public Education) Notice of Proposed Amendment - Transformation Learning Program. No Public Hearing Contemplated. 1576-1578

Page Number

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-551 (Fish and Wildlife Commission and the Department) Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Licensing. 1579-1608

12-553 (Fish and Wildlife Commission) Notice of Public Hearing on Proposed Repeal - Rest/Rotation and Walk/Wade Rules on the Madison River. 1609-1610

LABOR AND INDUSTRY, Department of, Title 24

24-7-387 (Unemployment Insurance Appeals Board) Notice of Public Hearing on Proposed Amendment and Repeal - Unemployment Insurance Appeals Board. 1611-1618

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-954 Notice of Public Hearing on Proposed Amendment - Certificate of Need. 1619-1628

37-967 Notice of Public Hearing on Proposed Adoption and Amendment - Marijuana Sampling Protocols. 1629-1652

REVENUE, Department of, Title 42

42-1043 Notice of Public Hearing on Proposed Amendment and Repeal - Lodging Facility Sales and Use Taxes - Rental Vehicle Sales and Use Taxes. 1653-1666

SECRETARY OF STATE, Office of, Title 44

44-2-251 Notice of Public Hearing on Proposed Amendment - Maintenance of Active and Inactive Voter Registration Lists for Elections. 1667-1668

44-2-252 Notice of Public Hearing on Proposed Adoption - Registration of a Person Who Employs a Paid Signature Gatherer. 1669-1670

RULE ADOPTION SECTION

LABOR AND INDUSTRY, Department of, Title 24

24-174-74 (Board of Pharmacy) Notice of Amendment and Repeal - Definitions - Collaborative Practice Agreement Requirements - Transfer of Prescriptions - Drug Distribution and Control in an Institutional or Correctional Facility - Use of Drug Kits in Certain Institutional Facilities - Additions, Deletions, and Rescheduling of Dangerous Drugs - Registered Pharmacist Continuing Education–Approved Programs - Use of Contingency Kits in Certain Institutional Facilities. 1671-1672

24-174-76 (Board of Pharmacy) Notice of Amendment and Adoption - Dispenser Registration for Medical Practitioners. 1673-1674

LIVESTOCK, Department of, Title 32

32-21-318 Notice of Amendment - Brands Enforcement Division Fees - Freeze Branding. 1675

32-21-319 Notice of Amendment - Fluid Milk and Grade A Milk Products. 1676

32-21-320 Notice of Amendment - Time From Processing That Fluid Milk May Be Sold for Public Consumption. 1677

32-21-322 Notice of Amendment - Diagnostic Laboratory Fees. 1678

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-949 Notice of Amendment - Developmental Disabilities Program Provider Rates Update. 1679-1682

37-957 Notice of Amendment - Updating Medicaid Provider Rates, Fee Schedules, and Effective Dates. 1683

SECRETARY OF STATE, Office of, Title 44

44-2-245 Notice of Amendment - Poll Watchers at Places of Deposit. 1684

44-2-247 Notice of Amendment - Eligibility of Applicants to Be Issued and to Cast a Ballot. 1685

SECRETARY OF STATE, Continued

44-2-248 Notice of Amendment - Notification Requirements for Emergency Rules Under the Montana Administrative Procedure Act. 1686

44-2-249 Notice of Amendment - Legislative Oversight of Administrative Rules. 1687

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1688-1689

How to Use ARM and MAR. 1690

Recent Rulemaking by Agency. 1691-1699

Executive Branch Appointees. 1700-1704

Executive Branch Vacancies. 1705-1712

BEFORE THE STATE LOTTERY AND SPORTS WAGERING COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.63.203, 2.63.401, 2.63.403, 2.63.407, 2.63.611, and 2.63.1201 pertaining to definitions, places of sale, applications and fees, commission, revocation or suspension of license, and prizes	))))))	AMENDED NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 15, 2022, the commission proposes to amend the above-stated rules.

2. On November 5, 2021, the commission published MAR Notice No. 2-63-621 pertaining to the proposed amendment of the above-stated rules at page 1441 of the 2021 Montana Administrative Register, Issue Number 21. The commission inadvertently failed to notify the appropriate interim committee concurrently with filing the proposal with the Secretary of State (2-4-302(2)(a), MCA). The commission has subsequently notified the appropriate interim committee. The commission is extending the comment period in this notice, but the proposed amendments have not changed since the initial notice.

3. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Lottery no later than 5:00 p.m. on December 1, 2021, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, Montana Lottery, 2525 North Montana Avenue, P.O. Box 6073, Helena, Montana 59604-6073; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

4. GENERAL STATEMENT OF REASONABLE NECESSITY:

As part of its required biennial review of rules, the commission has identified necessary changes identified in these proposed amendments. Some of the proposed amendments are technical in nature, such as amending punctuation. Reasons for other proposed changes are addressed specifically for those rules.

5. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.63.203 DEFINITIONS In addition to the definitions found in 23-7-103, MCA, the following definitions apply to this chapter:

(1) remains the same.

(2) "License" means the document issued by the lottery which authorizes a ~~retailer~~ sales agent to sell lottery tickets at a fixed place of business.

(3) through (8) remain the same.

AUTH: 23-7-202, MCA
IMP: 23-7-301, 23-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is changing the terminology from "retailer" to "sales agent" to be consistent with the terminology used in other rules in this chapter and in Chapter 284, Laws of 2019 (House Bill 725).

2.63.401 SALES AGENT PLACES OF SALE (1) through (2)(b) remain the same.

~~(c) whose owner has the appropriate alcoholic beverage license as defined in 23-5-119, MCA;~~

(d) through (i) remain the same but are renumbered (c) through (h).

AUTH: 23-7-202, 23-7-301, MCA
IMP: 23-7-103, 23-7-301, 23-7-306, 23-7-307, MCA

STATEMENT OF REASONABLE NECESSITY: The commission proposes to remove (2)(c) as the result of an order of the Montana First Judicial District Court of Lewis and Clark County that determined the alcoholic beverage license requirement was in conflict with House Bill 725.

2.63.403 SALES AGENT APPLICATIONS AND FEES (1) A person interested in obtaining a license as a sales agent shall:

(a) complete an ~~eStop~~ application and pay the required licensing fee ~~on the state licensing system portal at www.eStop.mt.gov~~;

(b) through (3) remain the same.

AUTH: 23-7-202, MCA
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Based on input from applicants, the commission proposes to amend ARM 2.63.403 to remove reference to eStop. Because the specific information technology system used to submit applications is subject to change based on the needs of the State as a whole, it will be less confusing to applicants if the commission removes reference to a specific IT system that may change or be rebranded. As stated in the remainder of ARM 2.63.403, application forms are available at montanalottery.com.

2.63.407 SALES AGENT COMMISSION (1) through (5) remain the same.

(6) ~~Sales agents who offer sports wagers are entitled to a 6 percent base commission of the value of sports wagers made.~~ The sales agent commission for sports wagers will be set by the State Lottery and Sports Wagering Commission.

AUTH: 23-7-202, 23-7-301, MCA
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: In response to requests from sports wagering sales agents, the lottery is proposing to allow the commission to set sales agent commissions in response to quickly changing business needs.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (3) remain the same.

~~(4) The director may decline to renew a license that could be revoked or suspended under this rule.~~

(5) remains the same but is renumbered (4).

AUTH: 23-7-202, MCA
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Lottery licenses do not need to be renewed periodically. Because the commission does not renew licenses, (4) was not necessary.

2.63.1201 PRIZES (1) through (3) remain the same.

(4) The claimant's ~~name,~~ city of residence~~,~~ and amount of prize is public information. The lottery may use a claimant's name and photograph for publicity and advertising purposes only upon written authorization by the claimant.

(5) through (15) remain the same.

AUTH: 23-7-202, 23-7-311, MCA
IMP: 23-7-108, 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The 2021 legislature enacted Chapter 116, Laws of 2021 (House Bill 232), to protect the privacy of lottery players. With the enactment of HB 232, it is necessary for the commission to amend (4) to provide that a claimant's name is not public information.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Bryan Costigan, Montana Lottery, 2525 N. Montana Ave., Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or e-mail bcostigan@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bryan Costigan at the above address no later than 5:00 p.m., December 1, 2021.

8. If the commission receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The commission will hold a hearing on this proposal if the commission receives requests for a hearing from 25 persons, because ten percent of those directly affected has been determined to be 122 persons based on the approximately 1,223 licensed sales agents in Montana.

9. The commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Montana Lottery rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Frank Garner, the primary sponsor of HB 232 (2021), was contacted on October 26, 2021, by electronic mail and United States Postal Service first class mail to the address on file for him with the Secretary of State. No comments were received.

12. The commission has determined that under 2-4-111, MCA, the proposed amendments will not significantly and directly affect small businesses.

By: /s/ John Tarr
John Tarr, Chair
State Lottery and
Sports Wagering Commission

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 9, 2021.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.2102 pertaining to rates and premiums, and the repeal of ARM 6.6.2103 pertaining to payment or benefits	)))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend and repeal the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on December 1, 2021, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-3152; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

6.6.2102 RATES AND PREMIUMS; PROPERTY AND CASUALTY INSURANCE (1) ~~Rates or premiums for any property or casualty insurance policy, plan, or coverage on a risk, when the risk is resident, located, or to be performed in the state of Montana shall not be based on sex or marital status.~~

~~(2)~~ Factors which an insurer may take into account to determine rates or premiums for motor vehicle liability and property coverage include, but are not limited to:

(a) the age of the driver;

(b) the sex of the driver;

(c) the marital status of the driver;

~~(b)~~ (d) the length of driving experience;

~~(c)~~ (e) the number of years licensed to operate a motor vehicle;

~~(d)~~ (f) a determination of which driver, among several insured individuals, is the primary driver of a covered vehicle, based upon the proportionate use of each vehicle insured under the policy by individual drivers insured or to be insured under the policy;

~~(e)~~ (g) average number of miles driven over a period of time;

~~(f)~~ (h) type of use, such as business, farm, or pleasure use;

~~(g)~~ (i) vehicle characteristics, features, and options such as engine displacement, ability of vehicle and its equipment to protect passengers from injury, vehicle make and model, and design characteristics related to damageability of the vehicle;

~~(h)~~ (j) commuting mileage over a period of time;

~~(i)~~ (k) the number of cars insured or number of licensed operators in the household~~, without regard to the sex or marital status of the licensed operators. An insurer may not utilize a policy of establishing insurance rates for an individual based upon the driving record of a spouse who is a licensed operator but not a primary driver of the vehicle to be insured unless the policy is applied in the same manner to households of individuals not married to each other~~;

~~(j)~~ (l) the amount of insurance;

~~(k)~~ (m) the anticipated cost of vehicle repairs or replacement, which may be measured by age, price, cost, or value of the insured automobile, and other related factors;

~~(l)~~ (n) geographic location;

~~(m)~~ (o) the accident record of the insured, including accidents for which the insured, although not cited, was substantially at fault; and

~~(n)~~ (p) the driving record of the insured, including citations.

AUTH: 33-1-313, MCA
IMP: 33-1-502, 49-2-309, MCA

REASON: The CSI proposes these changes to ARM 6.6.2102 due to the elimination of the prohibition against using sex or marital status as a basis for establishing insurance premium rates effective January 1, 2022.

4. The CSI proposes to repeal the following rule:

6.6.2103 PAYMENT OR BENEFITS

AUTH: 33-1-313, MCA
IMP: 33-1-502, 49-2-309, MCA

REASON: The CSI proposes to repeal ARM 6.6.2103 due to the elimination of the prohibition against using sex or marital status as a basis for establishing insurance premium rates effective January 1, 2022.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Richard E. Wootton, CSI Legal Counsel, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-5234; fax (406) 444-3497; TDD (406) 444 3246; or e-mail Richard.Wootton@mt.gov., and must be received no later than 5:00 p.m., December 17, 2021.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Richard E. Wootton at the above address no later than 5:00 p.m., December 17, 2021.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the actions impacting every insured person in Montana.

8. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the CSI.

9. An electronic copy of this proposal notice is available through the CSI web site at https://csimt.gov/laws-rules and through the Secretary of State's web site at http://sosmt.gov/ARM/Register. The CSI and the Secretary of State strive to make the electronic copy of this notice conform to the official version of the notice, but advise all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the CSI and the Secretary of State work to keep their web sites accessible at all times, concerned persons should be aware that the web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the CSI e-mail address do not excuse late submission of comments.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the CSI has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Richard E. Wootton
Richard E. Wootton
Rule Reviewer

/s/ Ole Olson
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State November 9, 2021.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.54.1010 pertaining to the transformation learning program	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Board of Public Education (board) proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on December 10, 2021, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail mflynn@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

10.54.1010 DEADLINES FOR APPLICATIONS AND ANNUAL REPORTS

(1) For applications submitted for transformational learning aid, the following deadlines apply:

~~(a) for fiscal year 2020 annual report submission: February 3 – February 21, 2020;~~

~~(b) for fiscal year 2021 opening date for applications: February 3, 2020;~~

~~(c) for fiscal year 2021 closing date for applications: February 21, 2020;~~

(a) for fiscal year 2023, the opening date for applications: January 3, 2022;

(b) for fiscal year 2023, the closing date for applications: January 10, 2022;

~~(d)~~ (c) for all other fiscal years, the opening date for applications and for submission of annual reports is the first Monday of December each year; and

~~(e)~~ (d) the closing date for applications and for submission of annual reports is the second Monday of January each year following the opening date.

(2) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, ~~20-2-114,~~ 20-7-1506, 20-7-1602, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-7-1506, 20-7-1602, MCA

REASON: The board proposes to amend the rule to comply with HB 89 (2021). The Superintendent of Public Instruction recommended the proposed deadlines to the board to allow for the new lottery system to be utilized for the upcoming application period. The board also removes specific deadlines for FY 2020 and FY 2021, as

they are no longer applicable. The deadlines provide a reasonable time for review and qualification of the applications and annual reports prior to distribution of funds. The Superintendent of Public Instruction determined that the proposed deadlines are administrative in nature and, thus, the negotiated rulemaking process was unnecessary.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: McCall Flynn, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59635; telephone (406) 444-0300; fax (406) 444-0847; or e-mail mflynn@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to McCall Flynn at the above address no later than 5:00 p.m., December 17, 2021.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 41 persons based on 409 public school districts in Montana.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tammy Lacey
Tammy Lacey
Chair
Board of Public Education

Certified to the Secretary of State November 9, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV, the amendment of ARM 12.3.105, 12.3.110, 12.3.112, 12.3.113, 12.3.115, 12.3.116, 12.3.123, 12.3.131 through 12.3.135, 12.3.140, 12.3.160, 12.3.165, 12.3.185 through 12.3.187, 12.3.205, 12.3.209, 12.3.210, 12.3.220, 12.3.225, 12.3.230, 12.3.235, 12.3.402 through 12.3.404, 12.3.410, and 12.3.411, and the repeal of ARM 12.3.106, 12.3.109, 12.3.111, 12.3.120, 12.3.121, 12.3.125, 12.3.150, 12.3.155, 12.3.170, 12.3.175, 12.3.179, 12.3.180, 12.3.201, 12.3.201A, 12.3.215, 12.3.405, and 12.3.406 pertaining to licensing	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 13, 2021, at 1:30 p.m., the Fish and Wildlife Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed adoption, amendment, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1 206 337 9723
Meeting ID: 848 0995 1956
Password: 699751

2. The commission and department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 29, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. OVERALL REASON: All state agencies are required pursuant to 2-4-314, MCA, to review administrative rules at least biennially "to determine if any new rule

should be adopted or any existing rule should be modified or repealed." In addition, Governor Gianforte issued Executive Order No. 1-2021 creating the Red Tape Relief Advisory Council to Implement Regulatory Reform, directing each agency to identify excessive, outdated, and unnecessary regulations.

The department and commission have sporadically adopted, amended, and repealed individual administrative rules pertaining to licensing but have not completed a comprehensive review of all the administrative rules in the licensing chapter (ARM Title 12, chapter 3). Most of the language proposed to be adopted, amended, or repealed in this notice is to remove outdated and unnecessary language and remove rule language that unnecessarily repeats language in statute. The proposed adoption, amendment, and repeal of these rules will not change current practice, but will reflect what is already being done with regard to licensing.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I OUTFITTER PREFERENCE POINTS (1) Preference points are non-refundable and not transferable between applicants.

(2) In accordance with 87-2-115, MCA, nonresidents hunting with an outfitter may purchase an outfitter preference point in addition to the purchase of a preference point.

(3) If an applicant is unsuccessful in the drawing and retains their outfitter preference point, those accumulated points may only be used when the applicant elects to hunt with an outfitter at the time of application in subsequent drawings if done in consecutive years.

(4) Licenses issued using the outfitter preference point shall be clearly marked "OUTFITTER PREFERENCE POINT LICENSE" and shall be endorsed by the outfitter(s) providing the service under that license, in a manner determined by the department.

AUTH: 87-1-301, MCA
IMP: 87-2-115, MCA

REASON: HB 637 (2021) added language allowing "a nonresident hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3" "may purchase two preference points per license year." This rule clarifies that the preference points are non-refundable and not transferable and that outfitter preference points may only be purchased when the applicant elects to hunt with an outfitter at the time of application. The language contained in (4) provides that a license using an outfitter preference point must be clearly marked or colored indicating that the hunter must be hunting with an outfitter. This measure is necessary to prevent the unauthorized sale and use of a license that was acquired through the use of an outfitter preference point. This will prevent the potential for licenses to be brokered by having a license printed that clearly states that it must be used with an outfitter and will create a sound method for enforcement. Finally, requiring the license to be endorsed by the outfitter(s) providing services for that license will link the hunter to an outfitter. Endorsement will include outfitter(s) signature and outfitter(s) license number.

NEW RULE II CONVERSION OF LICENSE TYPE (1) A resident who has purchased a bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena office or a regional office at the time of application for a class AAA combination license.

(2) A resident who purchases a class A-8 license may request a refund by returning the license to the Helena office or a regional office at the time of application for a class A license.

(3) A nonresident who has purchased a season bird, season fishing, or deer license may request a refund by returning the license to the Helena office at the time of application for a B-10 or B-11 license.

AUTH: 87-1-201, MCA
IMP: 87-1-201, MCA

REASON: The language of NEW RULE II was originally found in ARM 12.3.402. The conversion of license type is best suited in a separate rule.

NEW RULE III DONATED LICENSES (1) In accordance with 87-2-815, MCA, the nonprofit organization must provide a copy of the articles of incorporation to the department as verification of eligibility.

(2) Donated licenses must be received by the department prior to the beginning of the hunting season in which they are applicable.

(3) Applications must be submitted on a form supplied by the department.

(4) Applications will be processed on a first come first served basis

AUTH: 87-2-815, MCA
IMP: 87-2-815, MCA

REASON: NEW RULE III is consistent with long-standing and current practice.

NEW RULE IV FORMS OF IDENTIFICATION (1) A valid state, federal, or tribal government-issued picture identification may be used to verify residency when purchasing a resident license.

AUTH: 87-2-106, MCA
IMP: 87-2-106, MCA

REASON: NEW RULE IV is consistent with long-standing and current practice.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.3.105 LIMITATION ON NUMBER OF HUNTING LICENSES (1) When the ~~department~~ commission sets a limitation or quota for the number of hunting licenses to be issued in any hunting district or other designated area, resident applicants shall receive at least 90% of the total hunting licenses to be issued for

that game species in that district. When the number of resident applicants totals less than 90% of the quota for that district, all resident applicants shall receive a hunting license for that game species.

(2) The remaining licenses will be issued to the nonresident applicants for that district by drawing. Then, any remaining licenses for that district shall be sold as surplus or over the counter.

~~(3) Any thereafter remaining licenses for that district shall be issued in such manner as the director determines.~~

AUTH: 87-1-304, 87-2-506, MCA
IMP: 87-2-506, 87-2-701, MCA

REASON: The amendments to ARM 12.3.105 clarify the appropriate authority and are consistent with long-standing and current process.

12.3.110 DEFINITIONS For purposes of ~~these annual regulations~~ this chapter:

(1) "Bonus point" means the same as described in 87-2-117, MCA.

(2) "Commission" means the Montana Fish and Wildlife Commission.

(3) "Contiguous land" means land that is owned in fee title by the applicant and that is not interrupted by land owned by another person. Land that is owned by the applicant that is interrupted by adjacent federal or state land may on an individual basis be considered as contiguous land if the individual leases the federal or state land.

(4) "Department" means the Department of Fish, Wildlife and Parks.

(5) "Drawing" means the random selection of licenses or permits when applications received exceed the quota set by the commission for a hunting district. The license or permit may include limitations on taking by sex, age, species, time period, or designated area.

(6) "Employee" means an individual who is paid by a landowner for services rendered and who has state, federal, or FICA taxes withheld from their pay.

(7) "Game damage" means the same as described in 87-1-225, MCA.

(8) "Land that is used by elk" means land that elk inhabit.

(9) "Landowner preference" means a drawing that is conducted before the general drawings in which the landowners are randomly drawn for a portion of the quota as set by the commission.

(10) "Landowner sponsor" means a landowner who meets the qualifications of 87-2-511, MCA, and these rules for licenses.

(11) "License" means an electronic or hardcopy document issued to an individual that grants the opportunity to hunt or fish for the species of animal.

(12) "License agent" means an entity that has received an appointment pursuant to 87-2-901, MCA.

(13) "Party" means a group of two to five persons applying together to obtain a permit or license.

(14) "Permit" means an electronic or hardcopy document to be used in conjunction with the proper license to hunt or fish for specific species of animals.

(15) "Preference point" means the same as established in 87-2-115, MCA.

(16) "Quota" means a set number of animals to be harvested, or licenses to be issued, within a specified land area (hunting district, administrative region, or state).

(17) "Regional license quota" means the total quota established of hunting districts within a specific department administrative region.

(18) "Super-tag" means licenses established under 87-1-271, MCA.

~~(1) "Hunting season" means any season set to accomplish one or all of the following:~~

~~(a) to provide sport hunting (general season);~~

~~(b) to harvest numbers of a species to manage the population according to available habitat (management season);~~

~~(c) to fulfill responsibilities for game damage control (damage season);~~

~~(d) to address the risk of disease.~~

~~(2) "License" means the document issued to an individual upon payment of the proper fee and in compliance with other requirements of law and rule from the department or its authorized license agent. A license constitutes the grant of authority by the state of Montana to hunt the species of game animal under the conditions set forth in annual rules adopted by the commission.~~

~~(3) "Permit" means the document issued to an individual which, upon payment of the proper fee and in compliance with requirements of the department, constitutes permission to that individual to hunt the listed game animal species under the conditions set forth thereon. A permit may be used only in conjunction with the proper license.~~

~~(4) "Drawing" means the random selection of licenses or permits when applications received exceed the quota set by the commission for a hunting district. The license or permit may include limitations on taking by sex, age, species, time period, or designated area.~~

~~(5) "Commission" means the Montana Fish and Wildlife Commission.~~

~~(6) "Contiguous land" means land that is owned in fee title by the applicant and that is not interrupted by land owned by another person. Land that is owned by the applicant that is interrupted by adjacent federal or state land may on an individual basis be considered as contiguous land if the individual leases the federal or state land.~~

~~(7) "Disease" means any disease that may directly or indirectly impact wildlife or wildlife management.~~

~~(8) "Game damage" means damage by game animals to private property - (most often stored livestock feed such as hay stacks or silage or standing cultivated crops such as grain, alfalfa hay or alfalfa seed) - which is of a magnitude deemed "unreasonable", constituting a problem for landowners.~~

~~(9) "Land that is used by elk" means land that elk inhabit.~~

~~(10) "Landowner preference" means a drawing that is conducted before the general drawings in which the landowners are randomly drawn for a portion of the quota as set by the commission.~~

~~(11) "Landowner sponsor" means a landowner who meets the qualifications of section 87-2-511, MCA and these rules for licenses.~~

~~(12) "Employees" mean individuals who are paid by a landowner for services rendered and have state, federal, or FICA taxes withheld from their pay.~~

~~(13) "Immediate family members" mean individuals who are related to the landowner by blood or marriage.~~

~~(14) "Quota" means a set number of animals to be harvested, or licenses to be issued, within a specified land area (hunting district, administrative region or state).~~

~~(15) "Tentative regulations" means "proposed" regulations which are distributed for public review and comment in draft form. In March, following publication, the Montana Fish, Wildlife, and Parks Commission may amend "tentative regulations" prior to adopting them as "final regulations".~~

~~(16) "Class of licenses" means B-10 is a nonresident combination license, B7 is nonresident deer, etc.~~

~~(17) "Prerequisite" means a license that must be purchased by a sportsman in order to purchase another license.~~

AUTH: 87-1-201, 87-1-301, MCA
IMP: 87-1-201, 87-1-301, MCA

REASON: The amendments to ARM 12.3.110 place the definitions in alphabetical order so words and definitions can be easily located. "License" and "permit" have been added along with "bonus point," "department," "identification," "party," "preference point," "regional license quota," and "super-tag" from other administrative rules.

12.3.112 ANTELOPE LICENSES (1) ~~Manner of drawing.~~ The department shall issue antelope licenses as described in ~~section~~ 87-2-706, MCA, and ARM 12.3.104 (landowner preference).

(2) Fifteen percent of a district quota will be set aside for the landowner drawing.

~~(3) Landowner applications must be on current year forms and postmarked no later than June 1st.~~

~~(4) Party applications.~~

~~(a) Party applications are limited to five or fewer members per party.~~

~~(b) All valid applications will be considered as a single application for purposes of the drawing; that is, all members will either be successful or unsuccessful.~~

~~(c) Any applicant applying as a member of an antelope party and who is otherwise eligible for landowner preference will be contacted and asked to make a choice between landowner preference and being in the party.~~

~~(d) Applications must have all requested party information, and that information must be correctly presented.~~

~~(e) A party will be broken up only under the following circumstances:~~

~~(i) If all members of the party do not list districts in the same order on their applications, the party will be split up and all members will be entered into the drawing individually.~~

~~(ii) If one member of the party fails to provide mandatory information such as date of birth, signature, etc. -- that member will be excluded from the drawings. The remaining members will be processed as a party.~~

~~(5) Landowner preference applications. All applications claiming landowner preference are verified through local game wardens for authenticity of ownership. Applications with errors may be sent back to the applicants for correction at the discretion of the department if time allows.~~

AUTH: 87-2-706, MCA
IMP: 87-2-706, MCA

REASON: The proposed amendments delete language that has been moved and consolidated into ARM 12.3.160. ARM 12.3.112(3) has been moved to ARM 12.3.140(6). ARM 12.3.112(5) is a practice that is no longer feasible as there is not enough time between when applications are submitted and approved that allows local game wardens time to approve individual landowner preference applications.

12.3.113 ELK PERMITS (1) ~~Manner of drawing.~~ The department issues elk permits for landowner preference described in ~~section~~ 87-2-705, MCA, according to the following policies and procedures:

(a) The statutory requirement of 640 acres of contiguous land is used only to determine if the applicant is eligible to apply as a landowner.

(b) If license/permits are valid in a designated portion of a hunting district, some of the land owned by the applicant must be within the boundaries of that portion.

(c) Both resident and nonresident landowners must use the special drawing application provided by the department. The department shall verify that the applicant owns 640 acres, that it is contiguous land used by elk, and that the designee of the landowner preference is eligible.

~~(d) The 15% calculation may result in a fraction of a license/permit. e.g. 15% of 50 is 7.5. If the decimal is equal to or greater than .5, it will be rounded up to the next whole number. If the decimal is less than .5, it will be rounded down to the next whole number.~~

~~(e)~~ (d) Partnerships may delegate landowner preference to members of the immediate family, a partner or an employee. Only one person may be delegated landowner preference for each sole proprietorship, partnership or corporation. A corporation may delegate the landowner preference to one shareholder.

~~(f)~~ (e) All applicants entitled to landowner preference will be considered in the preference drawings for elk. Unsuccessful landowner applicants who exceed 15% of a district will be entered into the regular drawings with their district choices. ~~As a result, unsuccessful landowner applicants will have two opportunities to be drawn.~~

~~(g) Landowner applications must be on current year forms and be postmarked no later than June 1.~~

~~(2) Party applications. Where the commission has authorized party elk hunts, the following rules apply:~~

~~(a) Application for elk permits is limited to two members per party;~~

~~(b) Both applications will be considered as a single application for the purpose of the drawing; both members of the party will either be successful or unsuccessful.~~

~~(c) Applications must have all requested party information correctly~~

~~presented. A party will be broken up only under the following circumstances:~~

~~(i) If both members of the party do not list their districts in the same order on their applications the party will be broken up and both members will be entered in the drawing individually.~~

~~(ii) If one member of the party is missing mandatory information such as date of birth, signature, etc. only that member will be eliminated from the drawings. The remaining member will be entered in the drawing individually.~~

~~(3)~~ (2) ~~Special elk permits.~~ Residents may not apply for an elk permit without first purchasing an A-5 elk license.

(3) Nonresidents must purchase the B-10 ~~nonresident big game combination~~ license ~~prior to or~~ at the time of submittal of drawing applications. ~~All persons holding a valid elk license may participate in postseason elk drawings under annual rules adopted by the commission.~~

~~(4) Landowner preference applications. Applications with errors may be sent back to the applicants for a correction at the discretion of the department if time allows.~~

AUTH: 87-1-301, 87-2-702, MCA
IMP: ~~87-2-706~~ 87-1-301, MCA

REASON: The language in ARM 12.3.113(1)(d) and (f) is in 87-2-705, MCA, and is unnecessary to be duplicated in administrative rule. ARM 12.3.113(2)(a) through (c)(ii) have been moved and consolidated into ARM 12.3.160. ARM 12.3.113(4) has been consolidated into ARM 12.3.165.

12.3.115 ~~DEER B LICENSE/~~DEER PERMITS (1) Residents may not apply for a deer permit without first purchasing an A-3 license.

(2) Nonresidents must purchase a B-10 or B-11 license at the time of submittal of drawing applications.

~~(1)~~ (3) The department shall issue deer B licenses and deer permits as described in ARM 12.3.104 (landowner preference).

~~(2) Residents who apply for a deer permit may do so without prior purchase of a deer license. When an individual is successful in a drawing for a deer permit, he must purchase the appropriate license before hunting. A permit is not valid unless it is accompanied by a valid license for the proper species. A conservation license must be purchased prior to application. Nonresidents who are applying for drawings for deer permits must purchase a B-10 or B-11 license prior to or at the time of submittal of drawing applications.~~

~~(3) Applications with errors may be sent back to the applicants for correction at the department's discretion if time allows.~~

AUTH: 87-1-304, MCA
IMP: 87-1-304, MCA

REASON: The amendments to ARM 12.3.115 are consistent with long-standing and current practice. ARM 12.3.115(3) has been consolidated into ARM 12.3.165.

12.3.116 MOOSE, SHEEP, AND GOAT LICENSES ~~(1) The department shall issue moose, sheep, and goat licenses as described in sections 87-2-701 and 87-2-506, MCA according to the following policy and procedures:~~

~~(a)~~ (1) Applicants for moose and goat licenses must ~~specify~~ designate only one choice for a hunting district. ~~However, for bighorn sheep, an applicant may specify a second choice.~~

(2) Applicants for sheep licenses must designate a first choice for hunting district. Any secondary opportunity selection must be for ewe only.

~~(b) Application for unlimited sheep must be postmarked no later than May 1. The deadline may be extended by the department if necessary to provide adequate time for the applicants to apply.~~

~~(2)~~ (3) The following procedure will be used when allocating 10% license opportunities for nonresidents in moose, sheep, and goat drawings:

(a) The total regional license quota, by species and region, will be used to determine 10% nonresident quota.

(b) Nonresident license allocations will be applied to those hunting districts and season types with a quota of ten or more ~~in the tentative regulations~~.

(c) Any remaining license allocation will be ~~put~~ included, on a rotating basis, in those hunting districts and season types with a quota of less than ten ~~of the tentative regulations~~.

(d) If no hunting district in a region has a quota of ten or more licenses ~~on the tentative regulations~~, all of the nonresident license authority will be allocated as described in (c).

(e) If a region has a total quota of less than ten, no nonresident license allocations will be made for that region.

AUTH: 87-1-304, 87-2-701, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, MCA

REASON: The amendments to ARM 12.3.116 are consistent with long-standing and current practice.

12.3.123 ~~COMBINATION LICENSE~~ ALTERNATE LIST (1) Interested nonresident hunters may sign up to be placed on a randomized list for a B-10 or B-11 license. ~~The department may initially issue more nonresident combination licenses than are set by quota. Quotas will be met by reduction of initial sales through the refund process. In addition, upon completion of the initial sale of nonresident combination licenses, the department will randomly draw names of unsuccessful general big game combination license applicants for an alternates' list and names for alternates' lists for the general and landowner-sponsored nonresident deer combination licenses.~~

(2) ~~These unsuccessful applicants~~ Interested nonresident hunters may be contacted and given the opportunity to purchase a license in the event refunds are issued to successful applicants which leave quotas unmet.

~~(2) In the event the alternate list is exhausted and refunded licenses remain to be issued, a secondary alternate list shall be prepared. Names shall be placed on the secondary alternate list on a first come, first served basis. Individuals must~~

~~request in writing to have their names placed on the list.~~

AUTH: 87-1-201, MCA
IMP: 87-2-511, MCA

REASON: The amendments to ARM 12.3.123 are consistent with long-standing and current practice.

12.3.131 PROPOSALS FOR LICENSES SOLD BY AUCTION OR LOTTERY ~~(1) The commission may authorize:~~

~~(a) the department to conduct the auction or lottery; or~~

~~(b) a wildlife conservation organization to conduct the auction or lottery.~~

~~(2)~~ (1) Organizations that demonstrate a commitment to the conservation of the species may submit a proposal to the commission for a license to be sold by auction or lottery.

~~(3)~~ (2) A proposal must include:

(a) a statement of the organization's purpose;

(b) copies of bylaws or articles of incorporation;

(c) details of the organization's previous involvement in the conservation of the species hunted under the license;

(d) details of the organization's previous experience in auctions or lotteries;

(e) information on how the auction or lottery would be conducted and an estimate of the potential revenue that will be generated; and

(f) a statement indicating whether the organization plans to retain up to 10% of the proceeds to cover reasonable auction expenses and that the organization will submit expenses associated with the auction of the license.

~~(4)~~ (3) The commission reserves the right to reject all bids and proposals.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA
IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

REASON: The amendments to ARM 12.3.131 remove language found in statute.

12.3.132 PROCEDURE FOR SUBMITTING PROPOSALS AND AWARDING AN AUCTION OR LOTTERY LICENSE (1) The department will ~~advertise the opportunity for organizations to submit auction or lottery license proposals through media announcements and letters to organizations showing interest in previous years~~ solicit and accept proposals from organizations to conduct auctions or lotteries for licenses.

(2) Proposals for auctions or lottery licenses to be issued for the following license year must be ~~mailed or hand delivered to Montana Department of Fish, Wildlife and Parks, License Bureau, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701 and must be postmarked or hand delivered~~ received by the department's Licensing Bureau on or before July 15. ~~If July 15 is a Saturday or Sunday the next business day is when proposals will be due.~~

~~(3) The commission may select a conservation organization proposal to receive the auction or lottery license and conduct the auction or lottery. The license~~

~~will be valid for the following license year.~~

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA
IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

REASON: The amendments to ARM 12.3.132 are consistent with long-standing and current practice.

12.3.133 ISSUANCE AND USE OF A LICENSE SOLD BY AUCTION OR LOTTERY (1) A license obtained through an auction or lottery may not be resold and may not be transferred except in accordance with this rule. ~~A license transferred by sale will be voided with no refund.~~

(2) The highest bidder or lottery winner may designate one person to receive the license before issuance of the license by~~:~~

~~(a)~~ submitting a completed and signed affidavit provided by the department.~~;~~ ~~and~~

~~(b) sending the affidavit certified mail to the department.~~

(3) The department shall issue the appropriate hunting license to the highest bidder, lottery winner, or a designee:

(a) after receipt of completed application; and

(b) after verification that the applicant is legally able to be licensed ~~under current statutes and administrative rules~~.

(4) A ~~hunting~~ license sold by auction or lottery is valid for ~~take of~~ one animal of the species for which it is issued.

(5) A ~~hunting~~ license sold by auction or lottery may be used in legally described hunting districts during legal hunting seasons for the species for which the license is issued.

AUTH: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA
IMP: 87-2-722, 87-2-724, 87-2-725, 87-2-811, 87-2-812, MCA

REASON: The amendments to ARM 12.3.133 are consistent with long-standing and current practice.

12.3.134 MOOSE, SHEEP, AND GOAT - SEVEN-YEAR WAIT REQUIREMENT (1) Prior to August 1, ~~A~~applicants who are successful in drawing a moose, sheep, or goat license ~~in a license year~~ may request to have their license voided. A voided license under this rule does not subject a hunter to the seven-year wait requirement when the applicant is ~~annulled and therefore are deemed not to have been issued the license so that they are not subject to the requirement to wait seven years to reapply if the following circumstances occur~~:

~~(a) the applicant is:~~

~~(i)~~ (a) a member of the armed forces and is either deployed outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) ~~to a combat zone, deployed in support of a peace-keeping mission,~~ or deployed in response to a state or national emergency; or

~~(ii)~~ (b) affected by a catastrophic or major natural disaster or man-made

event that requires the applicant's assistance as a member of a local, state, or federal management agency.;

~~(b) the applicant did not use and was unable to use the license during any part of the hunting season in the license year for which the license was issued and can provide appropriate documentation; and~~

~~(c) the applicant return the unused license as soon as possible during the hunting season for the species for which the license was issued or at least by December 31 and certifies that it was not used;~~

~~(i) the director or designee may authorize exceptions for extenuating circumstances that prevent the applicant from meeting the December 31 deadline for the return of license.~~

(2) Moose, sheep, and goat licenses returned under these circumstances may be reissued to unsuccessful applicants ~~in~~ for the original drawing.

AUTH: 87-1-301, MCA
IMP: 87-2-702, MCA

REASON: The amendments to ARM 12.3.134 are consistent with long-standing and current practice.

12.3.135 BONUS POINTS~~: AWARD AND ACCUMULATION~~ (1) Bonus points are non-refundable and non-transferable between applicants or species. ~~There is a bonus point program.~~

(2) If ~~A~~an applicant for a permit~~/~~ or license drawing who has elected to participate in the bonus points program by paying the fee established in 87-2-113, MCA, is unsuccessful in the drawing, they shall be awarded ~~a~~ the species-specific bonus point they purchased. ~~for that species for each year the applicant is unsuccessful, if the applicant has elected to participate in the bonus point program. Bonus points are awarded only when a participant in the bonus point program is unsuccessful in a drawing. A person may not "purchase" or be awarded a bonus point without applying for a license.~~

~~(3) The bonus point is awarded to the species, not the district, except in the case of a nonresident combination license classes B-10 and B-11, the bonus point applies to the license and not the species.~~

~~(4)~~ (3) An applicant's bonus points accumulate until the applicant is successful in drawing a permit~~/~~ or license for a species in their first choice district, including landowner preference applications. ~~or until the applicant fails to apply for a permit/license for more than two consecutive years for a particular species. However, if the applicant is a Montana resident in full time active military status, as verified by military orders, said time period can be for as many additional years as the applicant is on active duty.~~

~~(5)~~ (4) If an applicant is successful in drawing a permit~~/~~ or license for a species ~~in the first-choice district~~, the applicant's ~~loses all accumulated~~ bonus points are reduced to zero for that species only.

~~(6)~~ (5) If the following special circumstances occur, an applicant who is successful in drawing a permit~~/~~ or license ~~in the first-choice district~~ may retain their accumulated bonus points if the applicant:

~~(a) the applicant is:~~

~~(i)~~ (a) is a member of the armed forces and is either deployed ~~to a combat zone, deployed in support of a peace-keeping mission,~~ outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) or deployed in response to a state or national emergency; or

~~(ii)~~ (b) is affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state, or federal management agency~~;~~.

~~(b) the applicant did not use and was unable to use the permit/license during any part of the hunting season in the license year for which the permit/license was issued and can provide appropriate documentation; and~~

~~(c)~~ (6) ~~the~~ A qualifying applicant under (5) must return~~s~~ the unused permit~~/~~ or license ~~as soon as possible or at least by December 31 and certifies that it was not used;~~ prior to the first day of the season applicable to the permit or license.

~~(i)~~ (7) T~~t~~he director or designee may authorize exceptions for extenuating circumstances ~~that prevent the applicant from meeting the December 31 deadline for the return of permit/licenses~~.

~~(7) Rejection of an application pursuant to ARM 12.3.140 is equivalent to failure to apply.~~

~~(8)~~ (8) Applicants who lose hunting and fishing privileges through court action will lose accumulated bonus points for all species.

AUTH: 87-1-301, 87-2-117, MCA
IMP: ~~87-1-304,~~ 87-2-113, 87-2-117, ~~87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706,~~ MCA

REASON: The amendments to ARM 12.3.135 are consistent with long-standing and current practice. ARM 12.3.135(3) is deleted as the bonus point system was replaced with the preference point system for B-10 and B-11 licenses in 2011.

12.3.140 APPLICATION FOR DRAWINGS (1) The application deadline for B-10 and B-11 license drawings is April 1.

(2) The application deadline for elk and deer permit drawings is April 1.

~~(1)~~ (3) The application deadline ~~date~~ for ~~the~~ moose, sheep, ~~and~~ goat, and bison ~~special~~ drawings is ~~on or before~~ May 1.

(4) The application deadline ~~date~~ for elk B, deer B, ~~and~~ antelope, and antelope B ~~special~~ license and permit drawings is ~~on or before~~ June 1.

(5) Applications for youth licenses and permits are determined by the age of the child at the time of submitting the application.

(6) All applications for participation in any ~~special~~ permit~~/~~ or license drawing, except drawings under ARM 12.9.801 (damage hunts) provided for by these regulations must be submitted by the expressed deadline.~~postmarked by the U.S. Postal Service on or before the deadline date of the current license year, or delivered by private mail service on or before the deadline date; or if personally delivered, received in the Helena Fish, Wildlife and Parks office by 5:00 p.m., on the deadline date of the current license year. If the deadline date for application for any license or drawings, as set by the department, falls on a Sunday or state holiday,~~

~~that date shall be automatically extended to 5:00 p.m. of the next full work day. The deadline may be extended by the department if necessary to provide adequate time for the applicants to apply.~~

~~(2) The department shall reject an application for any permit/license drawing or for surplus, mountain lion, black bear, trapping, buffalo, or grizzly bear licenses if:~~

~~(a) application is not made on the current year's form provided by the department;~~

~~(b) applicant fails to provide mandatory information on the form;~~

~~(c) applicant fails to sign the application; or~~

~~(d) applicant fails to submit the proper fee. The department will not accept personal checks from nonresidents for nonresident license applications and drawing fees.~~

~~(3) Submittal of more than one application for any one drawing by an individual will disqualify that individual's applications from the drawing for which the multiple applications were submitted.~~

~~(4)~~ (7) No ~~corrections or~~ changes ~~may~~ will be made after the department has received the ~~drawing~~ application ~~, except those types that can be made without contacting the applicant. These include:~~

~~(a) adding hunter safety numbers;~~

~~(b) moving valid district choices up to replace invalid choices;~~

~~(c) eliminating species choices on those applications that are short money when the shortfall is the amount for that species; and~~

~~(d) adjusting party applications to insure party consistency.~~

~~(5) Any category of correction made by the department must be applied to all applications. In addition, the department will accept corrections on the applications of those seeking landowner preference. Unless otherwise provided by these rules, all drawings will take place in Helena.~~

~~(6) All applications for participation in buffalo, spring grizzly bear, swan and turkey drawings must be postmarked by the U.S. Postal Service by the advertised deadline date, or delivered by private mail service on or before the date to the address indicated for the particular drawing which is being applied for.~~

~~(7)~~ (8) If an application for any species is rejected by the department pursuant to this rule:

(a) the application ~~must not be included in the procedure for awarding the permits/licenses applied for~~ will not be included in the drawing;

(b) the applicant ~~must~~ will not be awarded a bonus point for that drawing for that species; and

(c) the drawing fee, preference point fee, ~~and any~~ bonus point fee, and any prerequisite licenses once the application is entered into the drawing, will be retained by the department. ~~Applications not processed in the drawing because of errors will be returned to the applicant with all fees.~~

(9) Rejection of an application pursuant to this rule is equivalent to failure to apply.

AUTH: 87-1-304, 87-2-701, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

REASON: The amendments to ARM 12.3.140 were made for clarification and are consistent with long-standing and current practice. Applications are limited to electronic submissions only and require mandatory information from the applicant prior to submission, making ARM 12.3.140(2) and (3) unnecessary. Mail-in applications are no longer accepted with the exception of limited application types which maintain submission requirements that are incompatible with the current automated licensing system.

12.3.160 PARTY APPLICATIONS ~~MEMBERS OF A PARTY; EFFECT OF REJECTION OF APPLICATION OF ONE MEMBER; EFFECT OF SPECIFICATION OF AN INCORRECT DISTRICT OR SPECIES~~ (1) All valid applications will be considered as a single application for purposes of the primary drawing; that is, all members will either be successful or unsuccessful.

(2) The party establisher will designate all members of the party at the time of application.

(3) Each party member is responsible for individually finalizing their own applications.

(4) Applications must have all requested party information, and that information must be correctly presented.

(5) The party establisher will create the party's hunting districts, bonus point enrollment, outfitter preference point, and preference point enrollment for the entire party. Any member applying under different designations will be removed from the party and will be entered into the drawing individually.

(6) Any applicant applying as a member of a party and who is otherwise eligible for landowner preference will be removed from the party and entered into the landowner preference drawing as an individual.

~~(1) If the department is required, pursuant to ARM 12.3.140, to reject an application submitted by one member of a party, the department will not reject the applications of the remaining members, if submitted correctly, and they will remain in the party.~~

~~(2) If a member of a party specifies on the application a species or district different from that specified by any other member or members of the party, that application will be eliminated from the party and entered into the drawing as an individual.~~

~~(3) As used in this part, "party" means two or more persons applying together as a group to obtain a permit/license.~~

AUTH: 87-1-301, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: Proposed amendments to ARM 12.3.160 consolidate language originally found in ARM 12.3.112 and 12.3.113. The definition of "party" was added to ARM 12.3.110.

12.3.165 APPLICATION ERRORS ~~BY THE DEPARTMENT~~ (1) Applications submitted with errors may be sent back to the applicants for correction at the department's discretion if time allows.

~~(1)~~ (2) If the department commits an error which results in the rejection or incorrect processing of an application that has been submitted in compliance with the regulations for a permit~~/~~ or license, the authorized number of permits~~/~~ or licenses, established by the commission, may be exceeded by up to 10% of the quota for each district by at least one license.

(3) The department is not responsible for third-party errors. If an applicant for a permit or license drawing proves to the satisfaction of the department the rejection of the application was due solely to a third-party error, and the department deems there is sufficient time to complete the processing of the application before the drawing is held, the department shall include the application in that drawing.

~~(2)~~ (4) The issuance of the permit~~/~~ or license ~~referred to in (1)~~ will be considered on a case-by-case basis ~~only to accommodate those applicants who might have received a permit/license if not for an error on the part of the department in processing the application~~. ~~This~~ Any increase in the quotas must be approved by the director and may not exceed 50 for all species in any license year. Any necessary quota extension in excess of the ~~number herein authorized~~ 50 must be approved by the commission.

(5) If the applicant is entitled to purchase a bonus point and/or a preference point and is not entered into the drawing solely because of an error, and the applicant fails to obtain a permit or license for the year the application was submitted, the applicant is entitled to purchase a bonus point or preference point for that year.

~~(3) If the department confirms an error on a rejected or incorrectly processed application and no permit/license can be issued, the department shall award that applicant a bonus point, if applied for, for the species for which the application was submitted.~~

AUTH: 87-1-301, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: Language contained in ARM 12.3.115 regarding application errors and in ARM 12.3.170 regarding third-party errors has been consolidated into ARM 12.3.165.

12.3.185 SUPER-TAG HUNTING LICENSES ~~(1) The department will issue one deer, one elk, one shiras moose, one mountain sheep, one mountain goat, one wild buffalo or bison, one antelope, and one mountain lion hunting license each year through a lottery. These hunting licenses are known as "super-tags."~~

~~(2)~~ (1) For each species, as designated in 87-1-271, MCA, an unlimited number of chances to draw a super-tag will be sold at $5 per chance. ~~Chances will be sold by license agents as defined in ARM 12.3.201A or through the department authorized web site on the internet. License agents will receive a commission of $0.50 for each super-tag transaction for a species. A transaction in this case means the purchase of one or more super-tag chances of the same species at one time. Individuals purchasing a ticket through the internet shall pay a convenience fee in accordance with the current internet provider contract.~~

~~(3)~~ (2) ~~After the completion of the special license drawing for a species, t~~The

department will conduct a ~~computerized~~ drawing to select~~ing randomly~~ the super-tag winner for ~~that~~ each species. ~~The department shall issue the appropriate super-tag to the lottery winner.~~

~~(4)~~ (3) Only a person legally ~~able~~ eligible to be licensed ~~under current Montana statutes~~ may purchase chances to draw a super-tag or use a super-tag. A person must possess a valid conservation license to be eligible to purchase a chance to draw a super-tag.

~~(5)~~ (4) The super-tag is valid for the taking of one animal of the species for which it is issued and is valid only for the current license year. A super-tag may be used in any legally described hunting district ~~open for hunting of that species~~ with an established season. ~~A super-tag may be used only during the legal hunting season for the species for which it is issued.~~ The person using the super-tag may use it only during a hunting district's ~~open~~ established season and is subject to all hunting regulations, including special weapons regulations, that apply to a hunting district. However, if a hunting district requires a permit to hunt that species in that district, a super-tag can be used without the special permit, and a super-tag is not subject to an established quota in a hunting district.

~~(6)~~ (5) In the event that a person who drew a license or purchased a license is also drawn for the super-tag for the same species, the person must surrender the license to the department before receiving the super-tag. The department will refund the license fee paid by the winner of the super-tag. The person winning the super-tag shall retain any accumulated bonus points for that species.

~~(7)~~ (6) The super-tag is a nontransferable license.

AUTH: 87-1-271, 87-1-301, MCA
IMP: 87-1-271, MCA

REASON: The amendments to ARM 12.3.185 are for clarification and to be consistent with long-standing and current practice.

12.3.186 SALVAGE PERMITS (1) For the purposes of 87-3-145, MCA, an individual may apply for a salvage permit for a ~~A~~ deer, elk, moose, or antelope accidentally killed as a result of a vehicle collision ~~may be salvaged and possessed if a permit is obtained from a peace officer, a department regional office during regular business hours, or by the department~~ through an electronic application and issuing process within 24 hours of taking possession of the animal.

(2) Any animal taken for salvage must:

(a) be taken in its entirety; and

(b) be disposed of in accordance with 75-10-213, MCA~~, and any meat rendered must be utilized for human consumption and may not be used for bait or any other purpose~~.

(3) The salvage permit will be issued on a form provided by the department.

(4) ~~Big game l~~Licenses and tags issued for the purpose of hunting shall not be used for purposes of salvaging animals.

(5) All parts of animals salvaged shall be made available for inspection by a peace officer upon request.

AUTH: 87-3-145, MCA
IMP: 87-1-301, 87-3-145, MCA

REASON: The amendments to ARM 12.3.186 remove language found in statute.

12.3.187 APPRENTICE HUNTER CERTIFICATE (1) An apprentice hunter must be accompanied by a mentor while hunting. The mentor must:

(a) meet the requirements of 87-2-810, MCA;

(b) possess a completed department-issued designation form;

(c) only accompany one apprentice at a time;

(d) remain within direct voice contact with the apprentice without the use of enhancement or transmittal devices, except prescription hearing aids; and

(e) remain within direct sight of the apprentice without the use of any magnifying or enhancing aids except prescription eyewear.

~~(2) Section 87-2-810, MCA, states a person cannot obtain an apprentice hunting certificate upon completion of a hunter safety course. For the apprentice hunter certificate, completion of a hunter safety and education course is defined as:~~

~~(a) passing a state-approved hunter education course including the required test and field day; and~~

~~(b) reaching 12 years of age by January 16 of the license year.~~

~~(3)~~ (2) Apprentice hunters 15 years of age or younger are allowed to hunt during any specified statewide youth season as provided in the regulations.

AUTH: ~~87-2-810,~~ 87-1-301, MCA
IMP: 87-2-810, MCA

REASON: The amendments to ARM 12.3.187 remove language found in statute.

12.3.205 REVIEW OF APPOINTMENTS (1) A license agent's appointment ~~shall~~ may be reviewed annually. In considering review, the department will evaluate the following:

(a) compliance of the agent to the procedures of the department and requirements of law for license fee remittance ~~and handling of the licenses assigned to him~~;

(b) complaints about the license agent that have remained ~~unexplained or unsatisfactorily explained~~ unresolved;

(c) the ~~public~~ convenience to the public ~~of continuation of a license agency at the location of this applicant's business~~; and

~~(d) whether or not it was necessary to go against the bond of the agent; and~~

~~(e)~~ (d) the overall performance of this agent.

~~(2) When a license agent sells less than 500 licenses or when the total license sales is less than $1,000 during a license year in an area where there are other license agents, then the appointment may not be renewed.~~

~~(3) Upon determination by the director that performance of an agent is unsatisfactory, revocation of an agent's certificate shall be initiated.~~

~~(4) An agent whose certificate is revoked, or whose bond was used may not be considered as a license agent for 3 years from date of revocation. Then the~~

~~director must be satisfied the ex-license agent has removed the cause of revocation.~~

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, 87-2-904, MCA

REASON: The amendments to ARM 12.3.205 are for clarification and to be consistent with long-standing and current practice.

12.3.209 REGULATIONS FOR ISSUANCE OF ~~FISH AND GAME~~ LICENSES (1) License agents are required to ~~fill in all blank information spaces on licenses issued~~ complete application information with factual information supplied by the applicants.

(2) It is prohibited for any license agent to date a license with any date other than the actual date the license is issued, except for the following:

(a) ~~nonresident 2-day fishing~~ B-4 or B-5 licenses which may be postdated for the dates the applicant wishes to fish; and

(b) ~~nonresident 3-day shooting preserve bird stamps~~ B-12 licenses which may be postdated for the dates the applicant wishes to hunt.

~~(3) No license shall be predated.~~

~~(4)~~ (3) Any applicant who fails to supply any information required on the licenses or fails to show proof of identity shall be refused the license applied for.

AUTH: ~~2-15-112,~~ 87-1-201, MCA
IMP: 87-2-106, MCA

REASON: The amendments to ARM 12.3.209 reference the license classes as established in statute.

12.3.210 DISCOUNT SALE OF HUNTING AND FISHING LICENSES PROHIBITED (1) Licenses must be sold at the rate established by Montana law. ~~No license agent shall sell or give away any license authorized or directed by the fish and wildlife laws of the state of Montana for less than the fee prescribed by such laws. No such agent shall advertise that any such license will be sold at any such lesser fee nor shall such agent at any time use the sale of such licenses as a trade stimulator, loss leader, or as any advertising program or device to promote or increase his sales of merchandise or equipment; except that this regulation shall not prohibit such agent from advertising that such licenses can be obtained, upon payment of the prescribed fee, at his usual place of business or designated location.~~

~~(2) The director may revoke the license agency of any license agent violating this rule.~~

AUTH: 87-1-201, MCA
IMP: 87-2-901, 87-2-904, MCA

REASON: License agents do not have the authority to alter license prices. The remainder of the rule language is no longer necessary as license agents use a point of sale device for license sales supplied by the department.

12.3.220 LICENSE AGENT APPLICATIONS ~~(1) A person interested in being appointed as a license agent shall file at the nearest regional office on an application form provided by the department.~~

~~(2)~~ (1) The application must be ~~signed~~ on a current form and provide sufficient information ~~for the department~~ to determine the eligibility for an appointment as set forth in ~~(3)~~ (2) ~~of this rule~~ and for the department~~, for security, to perform sufficient background checks~~ to insure that applicants and appointees conform to the law and rules.

~~(3)~~ (2) Before making an appointment, the department shall consider the following:

(a) the financial responsibility and security of the applicant and the applicant's business or activity; and

~~(i) the applicant shall have satisfactory credit ratings and must meet the bonding or security requirements of ARM 12.3.208;~~

~~(ii) an applicant shall have conducted business for at least one year at the location for which the license agent appointment is requested, unless a waiver is approved by the department;~~

(b) ~~unless a waiver is approved by the department,~~ the type of business or accessibility of the applicant's place of business to the public, including but not limited to:

(i) location of the business;

~~(ii) sporting goods stores;~~

~~(iii)~~ (ii) hours the business is open to the public; and

~~(c)~~ (iii) the availability of existing license agents to serve the public. ~~convenience and the volume of the expected sales;~~

~~(d) applicant's willingness to reimburse the department for the cost of the required electronic device and willingness to provide a dedicated telephone line to be attached to the device; and~~

~~(e) first in time, first in consideration.~~

~~(4) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, 87-2-902, MCA
IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.220 are for clarification and to be consistent with long-standing and current practice.

12.3.225 LICENSE AGENT ELECTRONIC FUNDS TRANSFER (1) As a condition of appointment, an agent shall agree to participate in the department's electronic funds transfer system.

(2) A license agent shall, before ~~being appointed~~ selling licenses, authorize the debiting and crediting (sweep) of an account in the license agent's name for the purpose of electronic funds transfer to or from the state's collection account, as provided in this rule.

(3) The license agent shall execute all forms required by the department, the

department's bank, or the license agent's bank ~~or the initiating bank~~.

(4) The department ~~may~~ will determine the schedule for ~~debiting or crediting~~ ~~(~~sweeping~~)~~ the license agent account. The department may allow deviation from the schedule in special circumstances.

(5) The license agent shall bring any error or dispute to the attention of the department before the sweep.

(6) In the event a license agent does not have sufficient funds to cover the sweep, a second attempt will be done at the next scheduled sweep. ~~A license agent must pay the amount of any nonsufficient fund (NSF) sweep within 48 hours after notification by certified check, cashier's check, or money order. If a NSF is not covered, the license agent shall immediately surrender licensing material and is subject to revocation proceedings.~~

(7) If it fails again, the license agent will not be permitted to sell licenses until the issue is resolved and the agent must pay the outstanding amount of all outstanding failed sweeps within 48 hours after notification by certified check, cashier's check, or money order. If outstanding balances are not paid in full within 48 hours, the license agent shall immediately surrender department-issued equipment and materials, is subject to revocation, and may be sent to a collection agency for unpaid balances owed.

~~(7)~~ (8) Two or more failed sweeps ~~that result in nonsufficient funds~~ within a single license year are cause for revocation or suspension.

~~(8) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.225 are for clarification and to be consistent with long-standing and current practice.

12.3.230 LICENSE AGENT DUTIES (1) Each license agent shall maintain ~~a license agent manual, materials, displays, and electronic devices~~ department-issued equipment, regulations, and materials in accordance with instructions from the department.

(2) Each license agent shall sell licenses via the department-approved electronic device ~~or back-enter data if the department provided generic form is used due to system failure~~.

(3) Each license agent shall electronically transfer to the department's bank account the department's portion of license sale proceeds as provided for in ARM ~~12.3.220~~ 12.3.225.

~~(4) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.230 are for clarification and to be

consistent with long-standing and current practice..

12.3.235 REVOCATION OR SUSPENSION OF LICENSE AGENT (1) The department may suspend or revoke an appointment for any of the following reasons:

(a) a change of business location;

(b) an insufficient sales volume;

(c) a delinquency in remitting money owed to the department;

(d) a violation of any rule adopted by the department or commission;

(e) the refusal to acquire or display any materials required by the department; or

(f) the appointee is ineligible for appointment ~~under ARM 12.3.201A and the facts giving rise to such ineligibility occurred or were discovered subsequent to the appointment~~.

(2) After notice in writing, the department shall revoke the license agency appointment for the following reasons:

(a) knowingly providing false or misleading information to the department or any other agency conducting an investigation on behalf of the department;

(b) the owner or principal manager of a license agent being convicted of a felony or two hunting or fishing offenses;

(c) endangering the security of the automated license system; or

(d) upon suspension, failing to rectify the problems which led to the suspension.

(3) Upon notice of revocation, the license agent shall give a final accounting to the department and surrender all department materials, including any department owned electronic devices. The license agent is liable for all money still owed the department.

~~(4) This rule will be implemented when the automated license system is operational as authorized by the director.~~

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, MCA

REASON: The amendments to ARM 12.3.235 are for clarification and to be consistent with long-standing and current practice.

12.3.402 LICENSE AND PERMIT REFUNDS (1) All license sales are final.

~~(1)~~ (2) No refund will be issued for any ~~hunting, fishing, or trapping~~ licenses or permits sold by the department, or associated fees, except as provided in ~~(1)(a) through (e) of~~ this rule.

(3) The department will ~~review all applicable information in evaluating requests~~ issue refunds as follows:

(a) a surviving heir of a license or permit holder may receive a full refund of the license or permit fees if the license or permit holder dies and has not used the license or permit~~.~~;

(b) ~~A~~ a license or permit holder may receive a 90% refund if a~~n immediate family member~~ spouse, domestic partner, parent, step-parent, child, or step-child dies and the license or permit holder has not used the license or permit~~.~~; ~~A request~~

~~for such refund must be accompanied by appropriate supporting documentation which includes, at a minimum, a copy of the death certificate of the license holder or immediate family member. For a hunting license, the request must be postmarked by the end of that calendar year;~~

~~(b)~~ (c) a license or permit holder~~s~~ may receive a 90% refund in the event that a medical ~~emergency~~ occurrence prevents the license or permit holder from using the license or permit; ~~A request for a medical emergency refund must be accompanied by appropriate supporting documentation which includes, at a minimum, a statement signed by a licensed physician. The physician must describe the nature of the medical emergency and state why it precludes using the license. For a hunting license, the request must be postmarked by the end of the calendar year;~~

~~(c) a resident who has purchased a conservation, bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a combination license. A resident who purchases a two-day fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a season fishing license. A nonresident who has purchased a conservation, season bird, season fishing or deer license may request a refund by returning the license to the Helena office at the time of application for a nonresident big game combination license. A nonresident who has purchased a conservation, season bird or season fishing license may request a refund by returning the license to the Helena office at the time of application for a nonresident deer or elk only combination license;~~

(d) if an applicant is issued an incorrect license or permit ~~(e.g., a sportsman over 62 years old is issued a regular conservation license and elk license for full price instead of the half price elk license)~~ through the fault of the department or a license agent, the license fees will be refunded, and the applicant may purchase the correct license or permit;

(e) ~~except for refunds under (1)(a), (b), and (c), nonresident combination license~~ B-10 and B-11 license holders may receive a license refund according to the following schedule, provided the ~~nonresident~~ license holder certifies that the license was not used:

(i) 80% refund if postmarked on or before August 1 of the license year;

(ii) 50% refund if postmarked after August 1 of the license year, but on or before the first day of the ~~general big game hunting~~ season for which the license is applicable. ~~with the following exceptions:~~

~~(A) if the license holder is outfitter sponsored and lack of success in drawing a permit eliminates opportunity to use the license, the amount retained by the agency will be $100, provided that the request is postmarked on, or prior to, October 1;~~

~~(B) if the license holder is landowner sponsored and lack of success in drawing a permit eliminates opportunity to use the license, the amount retained by the agency will be $50, provided the request is postmarked on, or prior to, October 1;~~

~~(iii) no refund will be issued after the opening of the general big game hunting season;~~

~~(f) for the purpose of considering refunds, any license ordered by mail shall~~

~~be considered sold when the department receives a valid application;~~

~~(g)~~ (4) ~~t~~The director, or ~~his~~ designee, may authorize exceptions to ~~the refund policy~~ this rule due to extenuating circumstances including but not limited to the following:

~~(i)~~ (a) declaration of war or police action;

~~(ii)~~ (b) catastrophic or major natural disaster or man-made event that necessitates the assistance from state or federal emergency management agency.

(5) Requests for refunds must be postmarked by December 1.

(6) Any request for a refund must be accompanied by supporting documentation as requested by the department.

(7) Refunds will not be issued for any licenses or permits sold on behalf of other entities.

AUTH: 87-1-301, MCA
IMP: 87-1-301, MCA

REASON: The amendments to ARM 12.3.402 are for clarification and to be consistent with long-standing and current practice. ARM 12.3.402(1)(c) was moved to NEW RULE II. ARM 12.3.402(1)(e)(ii)(A) refers to outfitter sponsored licenses which are no longer available.

12.3.403 REPLACEMENT LICENSES AND PERMITS (1) A ~~person~~ hunter may replace a department-issued hunting license or permit that is lost, stolen, or destroyed at a department office or any department license provider.

(2) The ~~person~~ hunter must appear personally at a department regional or area office or at headquarters in Helena, Montana during normal operating hours to replace a lost, stolen, or destroyed license or permit a second or subsequent time for the same species.

(3) The fee for each replacement license or permit issued under this rule is $5.

(4) Licenses and permits seized pursuant to a law enforcement action are not considered to be lost, stolen, or destroyed and will not be replaced.

(5) Replacement licenses and permits for animals deemed unfit for human consumption will be issued pursuant to ARM 12.3.404.

AUTH: 87-2-104, MCA
IMP, 87-2-104, MCA

REASON: The amendments to ARM 12.3.403 are for clarification and to be consistent with long-standing and current practice. HB 353 (2021) authorized the department to issue replacement licenses and permits for animals that are unfit for human consumption. The department is proposing amendments to ARM 12.3.404 to address those replacement licenses and permits.

12.3.404 ANIMALS UNFIT FOR HUMAN CONSUMPTION (1) The department will issue a replacement license or permit when an animal is deemed unfit for human consumption due to disease or prior injury.

(2) A majority of an animal must be unfit for human consumption in order for a replacement license or permit to be issued.

(3) The determination of whether an animal is unfit for human consumption is at the discretion of a department biologist or warden.

(4) The animal must be surrendered as directed by department personnel.

(5) Replacement licenses and permits will be issued at a department regional office, area office, or at the headquarters in Helena, Montana during normal operating hours. Other license agents are unable to issue replacement licenses and permits.

(6) If the animal was harvested using a combination license, the replacement license will be issued for only the portion of the license used to harvest the animal deemed unfit for human consumption.

(7) The hunter must designate whether they choose to be issued the replacement license or permit for the current year or the next license year when requesting a replacement license or permit.

(8) A replacement license or permit will not be issued if the lack of fitness for human consumption is due to the hunter's improper handling or care of the animal.

~~(1) In some instances, a hunter will shoot and tag a big game animal which is unfit for human consumption. Hunters who have shot such an animal may obtain a free replacement license. The replacement license replaces the license for the applicable license year only. No replacement license will be issued for use beyond the original license year or during any subsequent license year. In order to obtain a replacement license, a hunter may turn in the animal to a department biologist or warden for a determination that the animal is unfit for human consumption. The biologist or warden may make the determination or may refer the hunter to a licensed meat inspector or licensed veterinarian. If the hunter is referred to a meat inspector or veterinarian, a written statement from the meat inspector or veterinarian must be presented to the department for replacement. A hunter may go directly to, or may seek a second opinion from, a licensed meat inspector or a licensed veterinarian which would be honored by the department. No replacement license will be issued if the lack of fitness for human consumption is due to the hunter's improper handling or care of the animal. The animal must have all horns, antlers, bones, hide, hoofs, and teeth. This section does not apply to black bears, grizzly bears, buffalo, or mountain lions.~~

AUTH: 87-1-301, MCA
IMP: 87-1-301, MCA

REASON: HB 353 (2021) authorized the department to issue a replacement license or permit for animals that are unfit for human consumption. The department is proposing amendments to ARM 12.3.404 to address those replacement licenses or permits.

12.3.410 EXTENSION OF DEADLINES (1) The director has the authority to extend a deadline for purchasing or applying for a license or permit if, in the director's discretion, a significant event occurs that hinders the public from purchasing or applying for licenses or permits. ~~A significant event is an occurrence~~

~~that has widespread impacts of sufficient magnitude to warrant, in the director's opinion, the extension of purchasing and application deadlines. Some examples of a significant event include:~~

~~(a) automated licensing system failure;~~

~~(b) natural disaster; or~~

~~(c) major national or state emergency.~~

~~(2) The director has the discretion to determine the amount of time to extend a deadline after consideration of all the circumstances surrounding the significant event. The director may determine that the totality of circumstances makes an extension impractical.~~

~~(3) All other rules and statutes pertaining to licenses and permits are still in effect when the director extends a deadline.~~

AUTH: 87-1-301, 87-1-304, MCA
IMP: 87-1-301, 87-1-304, MCA

REASON: The amendments to ARM 12.3.410 remove unnecessary language. The remaining language gives the director latitude to extend deadlines as necessary.

12.3.411 HUNTERS AGAINST HUNGER (1) The department will annually distribute all funds accumulated in the hunters against hunger account to a federally tax exempt nonprofit organized under 26 U.S.C. 501(c)(3) with a mission to distribute food and provide charitable services to those in need on a statewide basis.

(2) The organization must:

(a) coordinate with other nonprofit organizations within the state to process game animals donated and distribute the processed meat to those in need;

~~(b) not charge more than seven percent overhead for grant processing;~~

~~(c)~~ (b) provide a list of meat processors responsible for processing donated game animals; and

~~(d)~~ (c) retain all carcass tags from donated game animals until meat from the animal is distributed.

(3) ~~Big~~ g Game animals donated for processing must be legally harvested or confiscated by law enforcement. Game animals killed by a vehicle are not permitted to be processed and distributed under this program.

(4) All processed meat through the hunters against hunger program will be offered at no charge to those in need.

(5) The contract will provide annual reporting requirements and any other conditions necessary. Noncompliance with the contract will result in loss or delay of funds.

AUTH: 87-1-293, MCA
IMP: 87-1-293, 87-1-628, MCA

REASON: The amendments to ARM 12.3.411 are for clarification and to be consistent with long-standing and current practice.

6. The department and commission propose to repeal the following rules

because they are either outdated or are unnecessary because they repeat statutory language:

12.3.106 DISABLED PERSONS

AUTH: 87-2-803, MCA
IMP: 87-2-803, MCA

REASON: The definition of "disabled persons" and permit to hunt from a vehicle is found in statute.

12.3.109 PURPOSE

AUTH: 87-1-201, 87-1-301, MCA
IMP: 87-1-201, 87-1-301, MCA

REASON: Administrative rules that state purpose are no longer considered necessary.

12.3.111 LICENSE/PERMIT PREREQUISITES

AUTH: 87-1-201, 87-1-304, MCA
IMP: 87-1-201, 87-1-304, MCA

REASON: Applicable license and permit prerequisites requirements are consolidated into ARM 12.3.113 and 12.3.115

12.3.120 HUNTER SAFETY REQUIREMENTS

AUTH: 87-1-301, 87-2-105, MCA
IMP: 87-2-105, MCA

REASON: Hunter safety requirements are found in statute.

12.3.121 DRAWING FEE

AUTH: 87-1-301, MCA
IMP: 87-2-113, MCA

REASON: ARM 12.3.121 has been incorporated into ARM 12.3.402

12.3.125 CERTIFICATE FOR GUIDED NONRESIDENT

AUTH: 87-1-301, MCA
IMP: 87-2-511, MCA

REASON: ARM 12.3.125 is unnecessary because outfitter-sponsored licenses are

no longer available.

12.3.150 COMPUTERIZED SYSTEM OF DRAWING: BONUS POINT PROGRAM

AUTH: 87-1-301, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

REASON: ARM 12.3.150 has been incorporated into ARM 12.3.135.

12.3.155 BONUS POINTS: NONTRANSFERABILITY; APPLICABILITY TO A PARTY

AUTH: 87-1-301, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: Applicable bonus point information was incorporated into ARM 12.3.135. Applicable party information was incorporated into ARM 12.3.160.

12.3.170 THIRD-PARTY ERRORS

AUTH: 87-1-301, MCA
IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-702, 87-2-705, 87-2-706, MCA

REASON: ARM 12.3.107 was incorporated into ARM 12.3.165.

12.3.175 PHASE-IN PROCESS

AUTH: 87-2-113, MCA
IMP: 87-2-113, MCA

REASON: ARM 12.3.175 refers to phasing in collection of bonus points in 2001 and 2003.

12.3.179 NONRESIDENT DEER LICENSES SEPARATED FROM BIG GAME COMBINATION LICENSES

AUTH: 87-1-301, 87-2-512, MCA
IMP: 87-1-301, 87-2-512, MCA

REASON: Nonresident deer licenses separated from big game combination licenses are addressed in 87-2-105, MCA, and are unnecessary in administrative rule.

12.3.180 CALCULATION METHOD – VARIABLE PRICED OUTFITTER SPONSORED LICENSES B-10 AND B-11

AUTH: 87-1-268, MCA
IMP: 87-1-268, MCA

REASON: ARM 12.3.180 is unnecessary because outfitter-sponsored licenses are no longer available.

12.3.201 PURPOSE OF APPOINTMENT

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, MCA

REASON: Administrative rules that state purpose are no longer necessary.

12.3.201A DEFINITIONS

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, 87-2-904, MCA

REASON: Definitions in ARM 12.3.201A were consolidated into ARM 12.3.110.

12.3.215 PLACES OF SALE

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, MCA

REASON: Applicable requirements in ARM 12.3.215 were consolidated into ARM 12.3.220.

12.3.405 REVOKED HUNTING LICENSES

AUTH: 87-1-102, MCA
IMP: 87-1-102, MCA

REASON: The language in ARM 12.3.405 is found in statute.

12.3.406 COPYING LICENSE RECORDS

AUTH: 2-6-109, MCA
IMP: 2-6-109, MCA

REASON: Public information requests regarding license records are managed by the department's information request policy.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Licensing Rules Comments, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail

FWPLicensingRules@mt.gov, and must be received no later than December 17, 2021.

8. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. NEW RULE I is being proposed due to the passage of HB 637 (2021). Representative Seth Berglee, primary bill sponsor of HB 637, was contacted on September 7, 2021, via email. Amendments to ARM 12.3.403 and 12.3.404 are being proposed due to the passage of HB 353 (2021). Representative Steve Gunderson, primary sponsor of HB 353, was contacted on September 7, 2021, via email.

11. With regard to the requirements of 2-4-111, MCA, the department and commission have determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

/s/ Hank Worsech
Hank Worsech
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State November 9, 2021.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.11.6702 and 12.11.6706 pertaining to rest/rotation and walk/wade rules on the Madison River	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On December 15, 2021, at 10:00 a.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1 206 337 9723
Meeting ID: 871 6059 9966
Password: 194749

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks (FWP), no later than 5:00 p.m. on December 3, 2021, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The commission proposes to repeal the following rules:

12.11.6702 WALK/WADE SECTIONS OF MADISON RIVER

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

12.11.6706 REST/ROTATION OF MADISON RIVER COMMERCIAL USE

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

REASON: ARM 12.11.6710 establishes a Madison River Work Group (work group) with the charge to make recommendations on the Madison River recreation management rules to the commission. At a work group meeting on September 22, 2021, the work group unanimously decided to recommend the commission repeal ARM 12.11.6702 and 12.11.6706. The work group's rationale for the recommended

repeal is due to lack of support for either rule. At its October 28, 2021, meeting, the commission voted to propose the repeal of the rules based off of the work group's recommendation.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Madison River Comments, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail madisonrivercom@mt.gov, and must be received no later than December 17, 2021.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the commission has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State November 9, 2021.

BEFORE THE UNEMPLOYMENT INSURANCE APPEALS BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.7.303, 24.7.304, 24.7.305, 24.7.306, 24.7.308, 24.7.312, and the repeal of ARM 24.7.201, 24.7.301, 24.7.309, 24.7.311, 24.7.313, 24.7.315, 24.7.316, and 24.7.320 pertaining to the Unemployment Insurance Appeals Board	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 21, 2021, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/84881727442, Meeting ID: 848 8172 7442; or

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 848 8172 7442.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Tiffany Gilbert, Unemployment Insurance, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-3311; facsimile (406) 444-2699; Montana TTD (406) 444-5549; or e-mail uiappealsboard@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.7.303 DEFINITIONS (1) The board incorporates by reference and adopts all applicable definitions set forth in ARM Title 24, chapter 11 and Title 39, chapter 51, MCA, unless context or a particular rule provides otherwise.

~~(1) "Administrator" means the administrator of the Unemployment Insurance Division of the Department of Labor and Industry.~~

~~(2) "Claimant" means an applicant for unemployment benefits.~~

~~(3) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming good cause and which could not be overcome by reasonable diligence on the part of the person.~~

~~(4) "Hearing officer" means the impartial salaried appeal referee designated to hear and decide the disputed claim in a contested case proceeding.~~

~~(5) "Respondent" means a nonappealing party.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: Reasonable necessity exists to strike the definition of "administrator" because the term is not used in these rules. The remaining definitions are stricken because those definitions, for purposes of conformity and consistency, are adopted from those unemployment insurance definitions set forth in ARM Title 24, chapter 11 and the Montana Code Annotated.

24.7.304 ~~RIGHT TO APPEAL~~ FILINGS WITH THE BOARD ~~(1) Any interested party dissatisfied with a decision made by a hearing officer is entitled to appeal to the board in accordance with the provisions of 39-51-2404, MCA.~~

(1) Any document required by or permitted to be filed with the board may be filed in hard copy, by e-mail, or by telephonic facsimile (fax), and addressed to the board as follows:

(a) hard copy filings may be mailed to P.O. Box 8020, Helena, MT 59624-8020 or hand delivered to 1315 Lockey Ave, Helena, MT 59601;

(b) fax filings may be transmitted to (406) 444-2699. Documents which are longer than twenty pages, inclusive of attachments and exhibits, may not be filed by fax;

(c) e-mail filings may be transmitted to uiappealsboard@mt.gov.

~~(2) The address and contact number for the board are as follows:~~
~~Unemployment Insurance Appeals Board~~
~~Montana Department of Labor and Industry~~
~~1315 Lockey Street~~
~~P.O. Box 1728~~
~~Helena, MT 59624-1728~~
~~Fax: (406) 444-2699~~
~~TTY/TTD: (406) 444-0532~~
~~Telephone: (406) 444-3311~~

(2) A document is filed, no matter how it is transmitted, on the date it is received by the board, not the date it is transmitted. It is the responsibility of the filing party to ensure that the documents are received timely by the board.

~~(3) Interested parties appealing to the board from a decision of a hearing officer must file with the board within the time provided by law a notice of appeal. The board may accept an appeal made after the time allowed if the board determines there is good cause to do so.~~

~~(4) An interested party's notice of appeal should set forth errors of the hearing officer and the issues that will be raised on appeal.~~

~~(5) Upon scheduling of an appeal, the board shall give interested parties written notice of the date, time, and place of the board review, and such notice shall be mailed to such parties at least ten days prior to the date of the board's review.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to amend the rule to clarify the forms of filing accepted by the board. Section (1) of the current rule is proposed to be stricken because it is duplicative of statute. Sections (3) through (5) of the current rule are proposed to be stricken because their substance will be transferred to a different rule for clarity and consistency of board rules as a whole.

24.7.305 BOARD REVIEW PROCEDURE (1) The board review on an appeal of an appeals referee's ~~a hearing officer's~~ decision shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. Review is initiated by filing a notice of appeal with the board.

(a) A notice of appeal should set forth all errors of the appeals referee's decision.

(b) All issues relevant to an appeal shall be considered and passed upon by the board.

(2) After receiving a notice of appeal, the board will issue written notice of the date, time, and place of the board review. The notice will be mailed to the parties at least ten days prior to the board's review.

~~(2) The board may review written argument and hear oral argument from any interested party concerning the findings of fact and the conclusions of law reached by the hearing officer. The board does not hear cross-examination by any opposing interested parties and any new material introduced for the board review must be introduced in accordance with ARM 24.7.312.~~

(3) An interested party to an appeal before the board may appear at any proceeding held in such appeal, either on the party's own behalf, by an attorney at law, or through an authorized lay representative ~~as prescribed by (4)~~. Lay representatives may not be paid for the representation unless they are employed by the claimant's labor union or are an employee of the employer receiving regular wages for the representation.

~~(4) Authorized lay representatives may be permitted to appear in proceedings before the board on behalf of interested parties so long as the lay representative does not charge a fee to represent the interested party's interests and is not otherwise compensated for representation except:~~

~~(a) A claimant may be represented by a person employed by the claimant's labor union if the person's duties include handling unemployment insurance matters for the union;~~

~~(b) An employer may be represented by:~~

~~(i) an employee of the employing unit or the owner of that employing unit as long as employee's or owner's typical duties include handling unemployment insurance matters for the employing unit and the employee or owner is not receiving separate remuneration; or~~

~~(ii) a person employed by a not-for-profit organization to which an employing unit pays a membership due or fee; and~~

~~(c) The department may be represented by an employee of the department.~~

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to amend this rule to simplify and clarify procedures for review by the board. Proposed (2) sets forth language proposed to be removed from ARM 24.7.304(5) so that all review procedure is consolidated. Current (2) is proposed to be removed because it is duplicative of ARM 24.7.306. Section (4) is proposed to be removed to shorten and simplify the administrative rules.

24.7.306 DETERMINATION OF APPEALS (1) The department shall transmit to the board all records that are pertinent to the appeal, including documents not admitted into the record by the appeals referee ~~hearing officer~~. The board will consider such records or portions of those records as the board deems appropriate. As soon as possible after the hearing, the board will decide whether to reverse, modify, or affirm the decision of the appeals referee ~~hearing officer~~. Written notice of the board's action will be sent to all interested parties.

(2) The board will review the appeals referee's ~~hearing officer's~~ decision for errors of law or fact. In making its determination, the board will consider the record transmitted on appeal, written or oral arguments, as well as any new material admitted pursuant to ARM 24.7.312.

(3) If ~~the appealing~~ a party fails to appear at the board proceeding and no good cause for continuance is shown, the board shall render its decision on the basis of the record, written argument submitted, and argument of parties in attendance. ~~If the decision on appeal to the board is based on the best evidence available pursuant to ARM 24.11.320, the board may render its decision based on the best available evidence.~~

(4) Inability of the board to achieve a favorable vote regarding an appeal results in affirming the decision of the appeals referee.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-310, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to utilize the term "appeals referee" because it is the statutory language utilized throughout Title 39, chapter 51, MCA. These amendments do not constitute a substantive amendment, nor need they require modification to informal references to the individual who determines benefit eligibility during contested case hearings. Section (4) incorporates and simplifies the requirements of ARM 24.7.320, which is proposed to be repealed, for instances where a majority decision is unable to be reached.

24.7.308 ~~CHALLENGES,~~ BOARD MEMBER DISQUALIFICATIONS (1) No member of the board shall participate in the review proceeding of any appeal in which ~~he~~ the member has an interest nor shall any such member appeal in which ~~he~~ the member has an interest nor shall any such member represent any interested party or witness at any board proceeding.

(2) Any interested party may challenge any member of the board in writing~~,~~ by filing with the board a motion, supported by affidavit, made in good faith, of personal bias, lack of independence, disqualification by law, or other ground of disqualification allowed by law. The motion must be filed five days prior to any related scheduled board action ~~served upon the chairman of the board, five days in advance of any scheduled board proceeding stating the reasons therefore, and if the board shall find merit in the challenge, it shall disqualify the challenged member and appoint the substitute member to hear the appeal if it deems such appointment advisable~~. Following the filing of such motion and a reasonable period of time for an opposing party to comment upon it, the board shall either enter an order of recusal or decline the member's disqualification.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 2-15-1704, MCA

REASON: Reasonable necessity exists to modify the rule's catchphrase to clarify the purpose of the rule as relating to board members, rather than benefits. The rule is proposed to be split into two parts. Section (1) now addresses the obligation of board members to recuse in matters when there is a conflict of interest. Section (1) is further proposed to be amended to make it gender neutral. Section (2) now addresses the procedure for requesting board member disqualification.

24.7.312 NEW MATERIAL BEFORE THE BOARD (1) All new material sought to be introduced at the board proceeding must be filed and served on all other parties ~~mailed or delivered to the board administrative assistant and all other parties~~ no later than five business days prior to the scheduled board proceeding or the material will not be considered by the board.

(2) and (3) remain the same.

(4) If the board finds that additional evidence is required to reach a decision, it may remand the matter to the ~~hearing officer~~ appeals referee to conduct a hearing to obtain additional evidence in the matter. The board shall promptly notify the interested parties of such action. The ~~hearing officer~~ appeals referee must make a new decision based on the additional evidence and the existing record.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to amend this rule to clarify procedures to submission of new material before the board.

4. The rules proposed to be repealed are as follows:

24.7.201 ADOPTION OF MODEL RULES

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The rule is proposed to be repealed because its adopted references are no longer accurate based on changes within other parts of the administrative rules. Further, the rules consider contested case proceedings, which do not occur before the board. As such, the rule is unnecessary.

24.7.301 POLICY

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: The rule is proposed to be repealed because the policy of the unemployment insurance program is set forth in the Montana Code Annotated and need not be restated in rule. Further, to the extent the rule may have been interpreted as setting forth substantive language, its location is confusing.

24.7.309 APPEALS DECISIONS TO BE FILED

AUTH: 2-4-103, MCA
IMP: 2-4-103, MCA

REASON: The rule is proposed to be repealed because it is archaic and no longer necessary. Decisions of the board, absent express order to the contrary and personally identifying highly confidential information (such as social security numbers), are public documents subject to public review pursuant to the Montana Constitution.

24.7.311 BENEFIT APPEAL NOTICE

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The rule is proposed to be repealed because it is no longer necessary. The board intends to continue listing appeal rights on administrative decisions. Nonetheless, it is the obligation of the parties to know their rights of appeal, if any.

24.7.313 OFFICIAL NOTICE

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The rule is proposed to be repealed because it is not necessary to the board's consideration. Because the board is tasked with carrying out substantial

justice and based on a review of the record before it, as well as with an opportunity to admit new evidence, express reference to official notice pursuant to the Montana Rules of Evidence is duplicative.

24.7.315 STANDARDS AND PROCEDURES FOR RECONSIDERATION OF DECISIONS

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: The rule is proposed to be repealed because reconsideration has not been utilized by the board for a number of years. Parties dissatisfied with the result before the board may appeal to District Court, without necessity of further consideration by the board.

24.7.316 INTERESTED PARTY

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: The rule is proposed to be repealed because it is nearly identical to the definition of "interested party" set forth in ARM Title 24, chapter 11. Because those definitions are proposed to be directly adopted by changes proposed here, this rule is no longer necessary.

24.7.320 SUBSTITUTE BOARD MEMBER

AUTH: 2-4-201, MCA
IMP: 2-15-124, 2-15-1704, 39-51-301, 39-51-2405, MCA

REASON: The rule is proposed to be repealed because it is confusingly worded. To the extent it is necessary, ARM 24.7.306(4), currently proposed, incorporates its explanation of procedure as to what happens when a majority of the board is unable to reach a decision.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tiffany Gilbert, Unemployment Insurance, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-3311; facsimile (406) 444-2699; Montana TTD (406) 444-5549; or e-mail uiappealsboard@mt.gov. Comments must be received no later than December 21, 2021, at 5:00 p.m.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive

notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ LAURA FIX
Laura Fix, Chair
UNEMPLOYMENT INSURANCE APPEALS BOARD

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.5.119, 37.27.106, 37.106.101, 37.106.106, 37.106.107, 37.106.113, 37.106.126, 37.106.133, 37.106.134, 37.106.137, 37.106.138, 37.106.139, and 37.106.1401 pertaining to certificate of need	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 9, 2021, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/87454003846; meeting ID: 874 5400 3846; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 874 5400 3846. Find your local number: https://mt-gov.zoom.us/u/kb5VkRAeJA.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.5.119 ~~HEALTH~~ LONG-TERM CARE FACILITY CERTIFICATE OF NEED: APPLICABLE HEARING PROCEDURES (1) Hearings relating to a ~~health~~ long-term care facility certificate of need are available to the extent granted and as provided in 50-5-306, MCA, ARM 37.106.115, and 37.106.120. The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337 do not apply to such hearings.

(2) Hearings relating to a ~~health~~ long-term care facility certificate of need will be conducted in person in Helena, ~~Lewis and Clark County,~~ Montana, at a location designated by the department, unless the parties mutually agree to conduct the hearing telephonically.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 50-5-306, MCA

37.27.106 DEPARTMENT PROCEDURES FOR APPROVAL OF CHEMICAL DEPENDENCY TREATMENT PROGRAMS (1) remains the same.

(2) Chemical dependency treatment programs seeking departmental approval of one or more ~~of the~~ services shall submit written application to the department on a form provided by the department.

(a) remains the same.

(3) The application shall be completed as per instructions~~.~~ and contain the following:

(a) A letter from the applicant, including supporting information and statistics, showing that there is a need in the community for the type of services requested in the application ~~and does not duplicate existing services~~.

~~(b) If applicable, evidence that the program has met the certificate of need rules and regulations as required by the Montana Certificate of Need Law.~~

~~(c)~~ (b) Evidence that the need for the requested services are included in the county plan as required by 53-24-211, MCA.

(4) through (10) remain the same.

AUTH: 53-24-204, 53-24-208, MCA
IMP: 53-24-208, MCA

37.106.101 DEFINITIONS (1) For the purpose of this subchapter:

(a) "Capital expenditure" is defined as provided in 50-5-101, MCA.

~~(a)~~ (b) "~~Current state health~~ Long-term care facilities plan" means the ~~compilation of components~~ plan prepared by the department containing guidelines for determining need for ~~health~~ long-term care facilities and services subject to certificate of need review that is most recently ~~adopted~~ approved by the Governor and a statewide health coordinating council appointed by the ~~governor; a separate component adopted by the statewide health coordinating council and the governor for a single type of service or facility is part of the current state health plan~~ director of the department.

(c) "Long-term care facility" is defined as provided in 50-5-301, MCA.

~~(b) "Health service" means a major subdivision, as determined by the department, within diagnostic, therapeutic, or rehabilitative areas of care, including alcohol, drug abuse, and mental health services, that may be provided by a health care facility. Specific treatments, tests, procedures, or techniques in the provisions of care do not, by themselves, constitute a health service.~~

~~(i) "Health service" includes radiological diagnostic health services offered in, at, through, by, or on behalf of a health care facility, including services offered in space leased or made available to any person by a health care facility except when the capital expenditure for the addition to or replacement of the same service is less than $750,000.~~

~~(c) "Major medical equipment" is defined as provided in 50-5-101, MCA, and the department interprets the phrase "substantial sum of money" in that definition to mean "more than $750,000".~~

(d) "Swing-bed" means a licensed hospital, ~~or~~ medical assistance facility, or critical access hospital bed that is also certified for the provision of long-term care pursuant to 42 CFR 482.~~66~~ 58.

(2) The following term~~s~~ appears in the Montana Code Annotated, ~~are~~ is not defined in the statutes, and ~~are~~ is interpreted by the department to mean the following:

(a) The phrase "enforceable capital expenditure commitment," ~~,~~ as used in 50-5-305, MCA, means an obligation incurred by or on behalf of a ~~health~~ long-term care facility when:

(i) through (iii) remain the same.

~~(b) The phrase "office of a private physician, dentists or other physical or mental health care professionals, including chemical dependency counselors", used in 50-5-301, MCA, as an exception from the definition of "health care facility", to mean the private offices of those professionals, whether practicing individually or as a group, and associated facilities that are:~~

~~(i) located on the premises of the professional's offices;~~

~~(ii) operated as an integral part of the professional's private practice; and~~

~~(iii) primarily available only to the professionals whose offices are located on the premises. Such facilities may include outpatient services and observation beds, but may not include inpatient services.~~

AUTH: ~~subsection (2) is advisory only but may be a correct interpretation of the law;~~ 50-5-103, 50-5-302, MCA
IMP: 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, ~~50-5-316, 50-5-317~~, MCA

37.106.106 SUBMISSION OF LETTER OF INTENT (1) Any person proposing an activity other than those to which ~~(3)~~ (2) and ~~(4)~~ (3) ~~below~~ apply and that is subject to review under 50-5-301, MCA, and not exempt under 50-5-309, MCA, shall submit to the department a letter of intent that contains the following:

(a) and (b) remain the same.

(c) a detailed statement outlining whether the proposal involves:

(i) the addition of a new service that is offered by or on behalf of the long-term care facility that was not offered by or on behalf of the long-term care facility within the 12-month period before the month in which the service would be offered, and, if so, an estimate of the annual operating and amortization expenses required to provide it;

(ii) the construction, development, or other establishment of a ~~health~~ long-term care facility that did not previously exist or is being replaced;

~~(iii) the construction, remodeling, renovation, or replacement of a health care facility requiring a capital expenditure of more than $1,500,000;~~

(iv) remains the same but is renumbered (iii).

~~(v) the expansion of a geographic service area of a home health agency;~~

~~(vi)~~ (iv) the use of hospital beds to provide nursing or intermediate developmental disability care and, if so, the number of beds involved; ~~or~~

(v) the provision of hospital beds to provide long-term care; or

(vii) remains the same but is renumbered (vi).

(d) through (n) remain the same.

~~(2) For letters of intent submitted under (1) of this rule, in determining whether or not a capital expenditure for equipment is over $750,000, the department will review the list submitted by the applicant pursuant to (1)(e) of this rule and will include in the cost calculation the cost of any support equipment necessary to the proper function of the item of major medical equipment in question.~~

~~(3)~~ (2) Any person or persons desiring to acquire or enter into a contract to acquire 50% or more of an existing ~~health~~ long-term care facility (whether through a single transaction or by adding to a portion already owned) must submit to the department a written letter noting intent to acquire the facility and containing the following:

(a) the services currently provided by the ~~health~~ long-term care facility and the present and proposed bed capacity of the facility;

(b) and (c) remain the same.

~~(4)~~ (3) Any person proposing to increase or relocate from one facility or site to another ~~no more than~~ 10 beds or less or 10% or less of the licensed beds, and no beds have been added or relocated in the two years prior, must submit to the department a letter of intent containing the following as one of the conditions that 50-5-301(1)(b), MCA, requires to be met in order to be exempt from certificate of need review for the change:

(a) and (b) remain the same.

(4) When a person incurs an obligation by or on behalf of a long-term care facility for a capital expenditure that exceeds $5 million and does not otherwise require a certificate of need, the person shall upon completion of the project:

(a) notify the department of the total amount of the expenditure; and

(b) provide the department a description of the project.

(5) ~~As required by 50-5-302(2), MCA, p~~Persons who acquire 50% or more of an existing ~~health~~ long-term care ~~facilities~~ facility but who do not file the notice of intent required by ~~(3)~~ (2) ~~of this rule~~ and 50-5-302(2), MCA, are subject to certificate of need review for the purposes of this subchapter and as required by 50-5-301(1)(c), MCA.

(6) The person must send a letter of intent to the Department of Public Health and Human Service, Office of Inspector General, Certificate of Need Program, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-302, MCA
IMP: 50-5-301, 50-5-302, MCA

37.106.107 SUBMISSION OF APPLICATIONS (1) through (4) remain the same.

(5) The original and ~~six~~ two copies of the application must be submitted to the department.

(6) through (10) remain the same.

AUTH: 2-4-201, 50-5-103, 50-5-302, MCA
IMP: 50-5-302, 50-5-310, MCA

37.106.113 CRITERIA AND FINDINGS (1) The criteria listed in (a) through (k) ~~below~~ are statutory criteria required by 50-5-304, MCA, and will be considered by the department in making its decision:

(a) the degree to which the proposal being reviewed:

(i) remains the same.

(ii) provides data that demonstrates the need for services contrary to the current state ~~health~~ long-term care facilities plan, including ~~but not limited to~~ waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or

(iii) is consistent with the current state ~~health~~ long-term care facilities plan.

(b) and (c) remain the same.

(d) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing ~~health~~ long-term care services by the person proposing the ~~health~~ long-term care service;

(e) through (g) remain the same.

(h) the relationship, including the organizational relationship, of the ~~health~~ long-term care services proposed to be provided to ancillary or support services;

(i) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing ~~health~~ long-term care services by the person proposing the construction project;

(j) the distance, convenience, cost of transportation, and accessibility of ~~health~~ services offered by long-term care facilities for persons who live outside urban areas in relation to the proposal; and

(k) remains the same.

(2) In addition to the statutory criteria cited in (1) ~~above~~, the department will consider the following in making its decision:

(a) whether ~~the equal access~~ the medically underserved population, as well as all other people within the geographical area documented as served by the applicant, will have equal access to the subject matter of the proposal; and

(b) whether patients will experience problems including~~, but not limited to,~~ cost, availability, or accessibility in obtaining care of the type proposed in the absence of the proposed new service.

AUTH: 50-5-103, 50-5-304, MCA
IMP: 50-5-304, MCA

37.106.126 SWING-BEDS: REVIEW CRITERIA (1) A certificate of need may be issued to a hospital, ~~or~~ medical assistance facility, or critical access hospital to establish swing-beds only if, in addition to compliance with all other applicable provisions of 50-5-304, MCA, and ARM 37.106.113:

(a) remains the same.

(b) no more than 50% of the excess bed capacity of the hospital, ~~or~~ medical assistance facility, or critical access hospital will be approved as swing-beds. Excess bed capacity is the difference between the number of licensed beds in the facility and the average acute care occupancy level of the facility over the three years prior to the date of the application for certificate of need.

(2) The utilization of swing-beds by a medical assistance facility or critical access hospital is subject to certificate of need review only if, as required by 50-5-301(1)~~(c)~~ (b), MCA, the facility did not offer long-term care during the 12 months prior to the month the service is scheduled to commence and the service will add annual operating and amortization expenses of $150,000 or more.

AUTH: 50-5-304, MCA
IMP: 50-5-304, MCA

37.106.133 CERTIFICATE OF NEED APPLICATION: INTRODUCTION AND COVER LETTER (1) remains the same.

(2) The applicant must send a cover letter, containing the information included in the original letter of intent with any pertinent revisions, to the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Certificate of Need Program, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. The cover letter must accompany the original and each of the ~~six~~ two copies of the information required by ARM 37.106.134.

AUTH: 2-4-201, 50-5-302, MCA
IMP: 50-5-302, MCA

37.106.134 CERTIFICATE OF NEED APPLICATION: REQUIRED INFORMATION The following must be included in a certificate of need application:

(1) remains the same.

(2) A description of the project's accessibility to the public. In particular, the following information must be included:

(a) the location of the proposed long-term care facility;

(b) through (d) remain the same.

(3) A discussion of planning and environmental considerations, including the following information:

(a) an explanation of how the proposed service or facility is compatible with the current state ~~health~~ long-term care facilities plan (a copy of which may be obtained from the Department of Public Health and Human Services, ~~Health Policy Services Division, Health Systems Bureau, 1400 Broadway~~ Office of Inspector General, Certificate of Need Program, 2401 Colonial Drive, P.O. Box ~~202951~~ 202953, Helena, MT 59620-~~2951~~ 2953). If it is not compatible, an explanation of why it should be approved must be included;

(b) through (12) remain the same.

AUTH: 2-4-201, 50-5-302, MCA
IMP: 50-5-302, MCA

37.106.137 ANNUAL OPERATIONAL REPORTS BY HOSPITALS AND CRITICAL ACCESS HOSPITALS (1) Every hospital and critical access hospital shall submit an annual report to the department on a form provided by the department ~~and no later than~~ by the deadline specified on the form. The annual reports must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(a) whether the hospital has received ~~JCAH~~ accreditation, and if so, for what period;

(b) through (e) remain the same.

(f) newborn nursery statistics, including:

(i) and (ii) remain the same.

(iii) total ~~new born~~ newborn days;

(iv) through (p) remain the same.

(2) Any facility failing to timely report such information to the department may be subject to corrective action.

AUTH: 2-4-201, 50-5-103, 50-5-302, MCA
IMP: 50-5-106, 50-5-302, MCA

37.106.138 ANNUAL FINANCIAL REPORTS BY HOSPITALS AND CRITICAL ACCESS HOSPITALS (1) Every hospital and critical access hospital shall submit an annual financial report to the department on a form provided by the department ~~and no later than~~ by the deadline specified on the form. The annual financial report must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(a) through (g) remain the same.

(h)(i) remains the same but is renumbered (h).

(ii) remains the same but is renumbered (i).

(iii) remains the same but is renumbered (j).

(2) Any facility failing to timely report such information to the department may be subject to corrective action.

AUTH: 2-4-201, 50-5-103, 50-5-302, MCA
IMP: 50-5-106, 50-5-302, MCA

37.106.139 ANNUAL REPORTS BY LONG-TERM CARE ~~AND PERSONAL CARE~~ FACILITIES (1) Every long-term care ~~and personal care~~ facility shall submit an annual report to the department on a form provided by the department ~~and no later than~~ by the deadline specified on the form. The annual report must be signed by the facility administrator and must include whichever of the following information is requested on the form:

(a) through (g) remain the same.

(2) Any facility failing to timely report such information to the department may be subject to corrective action.

AUTH: 2-4-201, 50-5-103, 50-5-302, MCA
IMP: 50-5-106, 50-5-302, MCA

37.106.1401 MINIMUM STANDARDS FOR CHEMICAL DEPENDENCY FACILITIES (1) remains the same.

(2) An inpatient chemical dependency treatment center which is established in a general acute-care hospital does not require separate licensure. ~~However, the certificate of need requirements of Title 50, chapter 5, subchapter 3, MCA, may apply.~~

(3) and (4) remain the same.

(5) The department ~~hereby~~ adopts and incorporates by reference ARM Title 37, chapter 27, subchapter 1, with the exception of ~~the following:~~ ARM 37.27.101~~,~~ and 37.27.106~~, 37.27.128(6)(a), 37.27.129(5)(a), 37.27.130(5)(a) and 37.27.135(5)(a)~~. ARM Title 37, chapter 27, subchapter 1 are rules which have been adopted by the Department of Public Health and Human Services setting forth program requirements for alcohol and drug abuse facilities to receive approval from the Department of Public Health and Human Services. Copies of these rules are available from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, MCA
IMP: 50-5-201, 50-8-101, 50-8-102, 50-8-105, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.5.119, 37.27.106, 37.106.101, 37.106.106, 37.106.107, 37.106.113, 37.106.126, 37.106.133, 37.106.134, 37.106.137, 37.106.138, 37.106.139, and 37.106.1401. It is necessary to amend the referenced rules to meet the changes from House Bill (HB) 231, eliminate references to repealed rules, clarify language, and bring rules into compliance with current statutes, update terminology, update references to federal regulations (CFR), and update department agency names and addresses.

ARM 37.5.119 and 37.106.113
The department proposes amending the term "health" to "long-term" consistent with changes made by HB 231.

ARM 37.27.106
The department proposes removing the reference to certificate of need (CON) consistent with changes made by HB 231. The department also proposes certain changes to clarify language and to remove outdated application requirements.

ARM 37.106.101
The department proposes adding and removing some definitions, updating wording consistent with changes to 50-5-101 and 50-5-301, MCA, and updating a reference to the CFR.

ARM 37.106.106
The department proposes adding and removing wording consistent with changes to 50-5-301, MCA, amending the term "health" to "long-term" consistent with changes made by HB 231, updating internal cross references, and adding the mailing address of the Office of Inspector General.

ARM 37.106.107
The department proposes changing the number of copies from six to two to reflect previous changes made to this requirement.

ARM 37.106.126
The department proposes adding "critical access hospital" because this facility type has swing-beds and updating a cross reference to the MCA.

ARM 37.106.133
The department proposes changing "Quality Assurance Division" to "Office of Inspector General" to reflect changes in the agency name. The department also proposes changing the number of copies needed from six to two. This change will eliminate unnecessary duplication of documents and reduce waste.

ARM 37.106.134
The department proposes inserting "long-term care" where needed and amending "health" to "long-term care facilities" consistent with changes made by HB 231, and updating the name and mailing address of the agency.

ARM 37.106.137 and 37.106.138
The department proposes adding "critical access hospital" and possible penalties for failure to timely report and removing outdated terminology. These changes will clarify the intent of the rules and make them easier to understand.

ARM 37.106.139
The department proposes removing "personal care facilities" because reports are not required by these types of facilities and adding possible penalties for failure to timely report. These changes will clarify the intent of the rules and make them easier to understand.

ARM 37.106.1401
The department proposes removing the CON requirement because it no longer applies to chemical dependency facilities and removing references to repealed rules. These changes will clarify the rule and make it easier to understand. The department also proposes changing "Quality Assurance Division" to "Office of Inspector General" to reflect changes in the agency name.

Fiscal Impact

The department anticipates no administrative costs or cost savings associated with the proposed rule amendments.

The proposed rulemaking is estimated to affect primarily home health agencies as an increase in home health applications is expected. Ambulatory surgical centers, long-term care facilities, hospitals, and critical access hospitals may be affected, as well as an undetermined number of patients needing those services.

The department intends for the proposed amendments to be effective retroactively to October 1, 2021.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by phone and email on November 3, 2021.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New Rules I and II and the amendment of ARM 37.107.301, 37.107.302, 37.107.303., 37.107.307, 37.107.309, 37.107.311, 37.107.313, 37.107.315, and 37.107.316 pertaining to marijuana sampling protocols	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 9, 2021, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81663908546; meeting ID: 816 6390 8546; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 816 6390 8546. Find your local number: https://mt-gov.zoom.us/u/kbmAtL2uRQ.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I QUALITY ASSURANCE SAMPLING PROTOCOL (1) Testing laboratories shall collect samples of marijuana items from licensees for the required quality assurance testing.

(2) Testing laboratories shall develop and implement a sampling protocol standard operating procedure that details at minimum:

(a) the testing laboratory's method for obtaining a random and representative sample for all matrices;

(b) sterile sampling technique for all matrices;

(c) testing laboratory sampler training;

(d) appropriate sampling equipment;

(e) appropriate sample transportation and storage;

(f) maintenance of sample custody and integrity; and

(g) sampling documentation and records.

(3) Testing laboratories shall create a sampling plan prior to each sampling event that details at a minimum:

(a) the licensee's business/trade name and licensee ID number;

(b) the physical address from which the laboratory test samples are to be collected;

(c) the estimated route driven to the site(s) and any detours taken;

(d) the testing laboratory sampler's license ID number;

(e) the testing laboratory vehicle and license plate number; and

(f) the date and time the sampling route begins and ends.

(4) The testing laboratory shall ensure sample integrity is maintained during transport to and storage at the testing laboratory licensed facilities. If the marijuana item specifies on the label how the product shall be stored, the testing laboratory shall store the sample as indicated.

(5) An employee from the licensee requesting sample collection shall be present to observe sample collection but shall not assist the testing laboratory sampler while physically collecting the laboratory test samples.

(6) The testing laboratory sampler shall collect a laboratory test sample that is random and representative of the test batch, meets the standards of the state laboratory's "Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, and Marijuana Infused Products" SOP-001, and is sufficient to complete all required quality assurance testing including quality control samples and re-runs.

(7) All sample increments from the same test batch shall be placed into one sample container that is free of the analytes of interest and appropriate for the analysis required.

(8) At least 50% of the laboratory test sample must be homogenized prior to analysis.

(9) Sample increments and/or laboratory test samples from different test batches must not be combined, batched, or composited under any circumstance or at any time. Each test batch requires one laboratory test sample and one complete quality assurance compliance test.

(10) Testing laboratories must refuse sample collection if sample adulteration is suspected and shall report incidents of suspected adulteration to the state laboratory within three business days. Adulteration may include:

(a) the application of kief to usable marijuana test batches;

(b) the application of solvents to usable marijuana test batches;

(c) the use of any deleterious substance to evade undesirable test results;

(d) the addition of any substance to increase any cannabinoid test result; or

(e) the addition of any substance to alter the weight of a marijuana item.

(11) A licensee shall only order tests for marijuana items that the licensee has grown, produced, or processed.

(12) The licensee shall store and secure test batches in a manner that maintains sample integrity and security during laboratory testing.

(13) Failed or remediated marijuana items shall be re-tested at the same testing laboratory from which the original failed test results came unless explicit written permission from the state laboratory is granted prior to re-testing.

(14) The state laboratory may inspect marijuana sampling events to ensure sampling protocols are being followed.

(15) The state laboratory adopts and incorporates by reference the "Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, and Marijuana Infused Products" SOP-001 (Version 1.0), which describes the sampling protocol for marijuana, marijuana concentrates and extracts, and marijuana infused products. A copy of this publication is available electronically at https://dphhs.mt.gov/assets/MarijuanaLab/MarijuanaSamplingProtocolSOP.pdf and may also be obtained from the Department of Public Health and Human Services, Laboratory Services Bureau, 1400 E. Broadway, Helena MT, 59620.

AUTH: 16-12-202, 16-12-209, MCA
IMP: 16-12-202, 16-12-209, MCA

NEW RULE II SUSPENSION OF TESTING LABORATORIES (1) The state laboratory may, after written notice to the testing laboratory, suspend the testing laboratory's license for a period of up to three months upon determining that a testing laboratory is providing inconsistent results in accordance with 16-12-202, MCA.

(2) The state laboratory will determine whether a testing laboratory is providing inconsistent results through evaluation of the testing laboratory's raw data.

(3) A suspension of licensure under this rule is subject to a contested case hearing before the Department of Public Health and Human Services' Office of Administrative Hearings and shall be conducted pursuant to the following administrative procedures: ARM 37.5.101, 37.5.117, 37.5.131, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

(4) A testing laboratory may not conduct any testing or transporting of marijuana or marijuana products during a period of suspension. Operating during a period of suspension shall be considered a violation of the marijuana laws as defined in ARM 42.39.102 and could result in the Department of Revenue taking further disciplinary action.

AUTH: 16-12-202, MCA
IMP: 16-12-202, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.107.301 ~~MARIJUANA~~ TESTING LABORATORY ~~LICENSURE AND ACCREDITATION~~ ENDORSEMENT REQUIREMENTS (1) A ~~marijuana~~ testing laboratory applicant must meet all applicable requirements under the Montana ~~Medical~~ Marijuana Regulation and Taxation Act (Title ~~50~~ 16, chapter ~~46~~ 12, ~~part 3,~~ MCA) and this subchapter in order to qualify for endorsement of either licensure or ~~licensure~~ renewal.

(2) An applicant ~~for a testing laboratory license~~ must provide, to the department's state laboratory, documentation to support fulfillment of these requirements, which includes ~~but is not limited to~~ the following:

(a) certificates of insurance and bonding in accordance with [MAR Notice No. 42-1033];

(b) remains the same.

~~(c) laboratory licensure fee payment;~~

(d) remains the same but is renumbered (c).

~~(e) laboratory employee fingerprint/background check clearance;~~

(d) department-issued employee badge;

(f) through (j) remain the same but are renumbered (e) through (i).

~~(k)~~ (j) scientific director professional resume, college transcripts/degrees from an accredited college or university;

~~(l)~~ (k) scientific director references; and

(m) remains the same but is renumbered (l).

(3) An application for endorsement for a testing laboratory license or renewal of license will not be considered complete, and an on-site ~~audit~~ inspection will not be scheduled, until all of the required documentation is provided.

(4) An inspection of the testing laboratory ~~audit~~ will be scheduled with the applicant following receipt of all required documentation.

(5) ~~A laboratory licensee~~ An applicant must implement processes that are ISO/IEC 17025:2017 compliant.

~~(6) An applicant, that meets all of the requirements of this subchapter and 50-46-311, MCA, but is not ISO/IEC 17025:2017 accredited, may be qualified for a provisional license pending ISO/IEC 17025:2017 accreditation approval, if written evidence of pending ISO accreditation and the results of an audit by the state laboratory indicate that accreditation will be achieved within 12 months from the date of licensure.~~

~~(7) A provisional laboratory license may not be extended or reissued beyond the date of the initial 12-month term.~~

~~(8)~~ (6) A ~~licensed~~ testing laboratory must maintain ISO accreditation for all methods/analytes in ARM 37.107.316, at all times.

~~(9)~~ (7) If a testing laboratory's method/analyte ISO accreditation lapses or is revoked, the testing laboratory must not perform those methods until it is reinstated.

~~(10)~~ (8) For the purpose of this subchapter, the ~~department~~ state laboratory adopts and incorporates by reference ISO/IEC 17025:2017, which sets forth general requirements for the competence of testing and calibration laboratories. A copy of the publication may be obtained from the American National Standards Institute (ANSI), 1899 L St. NW, 11th Floor, Washington, DC 20036; https://webstore.ansi.org/SDO/ISO.

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-304, 50-46-311, 50-46-326, 50-46-329, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.302 ~~MARIJUANA~~ TESTING LABORATORY GENERAL REQUIREMENTS (1) A ~~licensed marijuana~~ testing laboratory must employ a full-time scientific director that meets the minimum requirements described in ~~50-46-311~~ 16-12-206, MCA.

(2) The scientific director must ensure that:

(a) the testing laboratory achieves and maintains ISO/IEC 17025:2017 accreditation for all testing methods/analytes required in ARM 37.107.316;

(b) the testing laboratory's processes and practices are compliant with ISO/IEC 17025:2017 standards;

(c) the testing laboratory maintains quality practices in ~~the pre-analytic, analytic, and post-analytic phases of testing~~ accordance with their quality assurance plan;

(d) through (g) remain the same.

(h) test method validations have been performed initially and upon test method changes to determine the ~~accuracy, precision, and limitations of methods~~ minimum following requirements;

(i) accuracy;

(ii) precision;

(iii) linearity and working range;

(iv) coefficient of determination (r^2) for calibration curves;

(v) LOD;

(vi) LOQ;

(vii) MDL; and

(viii) reproducibility.

(i) and (j) remain the same.

(k) ~~remedial~~ corrective and preventative actions are taken and documented when significant deviations from the testing laboratory's established performance characteristics are identified and test results are reported only when test systems are functioning properly;

(l) the testing laboratory successfully participates in an approved proficiency testing (PT) program(s), as described in this subchapter, for all methods/analytes required in ARM 37.107.316;

(m) the physical and environmental conditions of the testing laboratory are adequate and appropriate for the testing performed; and

(n) the environment for employees is safe from physical, chemical, and biological hazards, and safety and biohazard requirements are ~~followed~~ met.

(3) A scientific director must be physically present at the testing laboratory for the majority of time that testing is performed in order to adequately carry out ~~their~~ his/her responsibilities.

(4) A ~~licensed marijuana~~ testing laboratory must be able to perform at least 75% of the quality assurance testing requirements defined in ARM 37.107.316.

(5) A ~~licensed marijuana~~ testing laboratory can only refer quality assurance testing to another licensed ~~marijuana~~ testing laboratory in Montana which has met the requirements of this subchapter, and the referred testing laboratory must be identified in all testing reports, the certificates of analysis, and ~~in METRC~~ the seed-to-sale tracking system.

(6) A ~~licensed marijuana~~ testing laboratory must obtain written permission from the ~~test batch sample's provider~~ licensee prior to sending the ~~provider's test batch~~ laboratory test sample to another ~~licensed marijuana~~ testing laboratory in Montana ~~or return the product to the provider at their request~~.

~~(7) A licensed marijuana testing laboratory may:~~

~~(a) obtain samples of marijuana items from providers, registered cardholders, or other licensees for testing as provided in this subchapter;~~

~~(b) transport and dispose of samples as provided in this subchapter; and~~

~~(c) perform testing on marijuana items in a manner consistent with the laboratory's accreditation.~~

~~(8) A licensed laboratory may return a marijuana item obtained for purposes of testing to the provider. The return of such marijuana items must be documented in METRC.~~

~~(9)~~ (7) A ~~licensed~~ testing laboratory must document ~~the following:~~

~~(a) receipt of samples for testing;~~

~~(b) size, weight, or quantity of the sample;~~

~~(c) provider from whom the sample was obtained;~~

~~(d) date the sample was collected, and who collected it;~~

~~(e) tests performed on samples;~~

~~(f) date(s) testing was performed;~~

~~(g) results of all testing performed;~~

~~(h)~~ certification of all testing performed and corresponding results in a certificate of analysis~~; and~~

~~(i) disposition of any remaining test sample material~~.

~~(10) A laboratory licensee must clearly identify all limited access areas at the premises.~~

~~(11) All laboratory licensee employees must wear a department issued identification badge.~~

~~(12) A laboratory licensee must maintain a daily log of all visitor activity at a registered premise. The log must contain:~~

~~(a) visitor first and last name;~~

~~(b) the date;~~

~~(c) arrival and departure times;~~

~~(d) visitor affiliation; and~~

~~(e) purpose of visit.~~

~~(13) Visitors must be accompanied by a laboratory licensee employee at all times.~~

~~(14) A laboratory licensee is responsible for the security of all marijuana items on the premises, in transit, and under the supervision of the licensee or licensee employee.~~

~~(15) A laboratory licensee must have a written security plan maintained on the premises that safeguards against theft, diversion, corruption, or tampering of quality assurance samples, and corresponding data/reports both on the premises, during transit, and storage.~~

~~(16) Commercial grade locks must be installed on every external door or gate of the laboratory, if applicable, as well as storage or transfer stations.~~

~~(17) A laboratory licensee must ensure general sanitary requirements are met on the premises to include:~~

~~(a) hand-washing facilities;~~

~~(b) proper and timely removal of all litter and waste; and~~

~~(c) toilet facilities that are maintained in a sanitary condition and good repair.~~

~~(18)~~ (8) A testing laboratory ~~licensee~~ must maintain ~~the following records/data~~ for at least three years~~:~~

~~(a) financial records that clearly reflect all financial transactions;~~

~~(b)~~ testing data and reports, ~~to include~~ including quality control ~~(QC)~~ data, standard curves, raw instrument data, calculations, spreadsheets, certificates of analysis, ~~provider~~ licensee reports, etc.~~; and~~

~~(c) all laboratory licensee employee training and payroll records.~~

~~(19)~~ (9) Records/data may be kept in either paper or electronic form on the premises and must be readily available for quality assurance and ~~audit~~ inspection purposes.

~~(20)~~ (10) A testing laboratory ~~licensee~~ must establish written emergency procedures to be followed in case of a fire, chemical spill, or other emergency at all premises.

~~(21) A laboratory licensee must provide and maintain, at its own expense, analytical testing laboratory professional liability insurance with an aggregate limit of one million dollars prior to the issuance of a license.~~

~~(22) A laboratory licensee must obtain and maintain a $25,000 surety bond which names the department as loss payee in the event the laboratory licensee fails to adhere to the security plan approved by the department, or it otherwise operates the facility in a manner that allows for, or results in theft, loss, or diversion of marijuana items. A copy of the bond must be submitted to the department prior to a license being issued.~~

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-303, 50-46-304, 50-46-311, 50-46-312, 50-46-326, 50-46-329, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.303 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Acceptance criteria" means the specified limits placed on the characteristics of an item or method that are used to determine data quality.

(2) "Accredited college or university" means a college or university accredited by a regional or national accrediting agency that is an accreditor recognized by the Secretary of the U.S. Department of Education.

(3) "Action level" means the threshold value that provides the criteria for determining whether a sample passes or fails an analytical test.

(4) "Adulteration" means intentionally modifying or altering a marijuana item from its original form to increase its monetary value, evade undesirable test results, or conceal the true composition of a marijuana item.

(5) "Analytical batch" means a set of matrix-specific laboratory test samples that are prepared together over a 24-hour time period using the same set of reagents for the same analysis and includes the required quality control samples.

~~(1)~~ (6) "Applicant" means a person ~~applying for a testing laboratory license~~ seeking endorsement for testing laboratory licensure or renewal of licensure.

~~(2)~~ (7) "Batch" ~~means:~~ has the meaning provided for in ARM 42.39.102.

~~(a) a quantity of usable marijuana from a harvest lot; or~~

~~(b) a quantity of cannabinoid concentrate or extract or cannabinoid product~~

~~from a process lot.~~

~~(3)~~ (8) "CBD" ~~means cannabidiol~~ has the meaning provided for in ARM 42.39.102.

~~(4)~~ (9) "CBDA" ~~means cannabidiolic acid~~ has the meaning provided for in ARM 42.39.102.

(10) "Certificate of analysis (COA)" has the meaning provided for in ARM 42.39.102.

(11) "Coefficient of determination (r^2)" means a statistical measure that determines how well the regression approximates the actual data points in the calibration curve, with a regression of 1 being a perfect fit.

(12) "Continuing calibration verification (CCV)" means a quality control sample that includes each of the target analytes at the mid-range of the calibration to evaluate the validity of the instrument's calibration over the entire sample sequence.

(13) "Corrective action" means an action taken by a licensee to resolve, and prevent from recurrence, a problem with operations of the licensee.

(14) "Customer" has the meaning provided for in ARM 42.39.102.

~~(5) "Department" means the Department of Public Health and Human Services.~~

(15) "Good laboratory practice (GLP)" means a system of management controls for testing laboratories to ensure the uniformity, consistency, reliability, reproducibility, quality, and integrity of analyses performed by the testing laboratory.

~~(6)~~ (16) "Harvest lot" ~~has the meaning provided for under ARM 42.39.102~~ means a specifically identified quantity of marijuana that is cultivated utilizing the same growing practices, harvested within a 72-hour period at the same location, cured under uniform conditions, and uniform in strain.

(17) "Ingredient" has the meaning provided for in ARM 42.39.102.

(18) "Initial calibration verification (ICV)" means a quality control sample that includes each of the target analytes at the mid-range of the calibration using secondary source standards to evaluate the validity of the calibration standards and calibration standards preparation.

(7) remains the same but is renumbered (19).

~~(8) "Licensee" means any person licensed by the department to operate a testing laboratory.~~

(20) "ISO/IEC 17025" means the general requirements specified by the ISO/IEC for the competence of testing and calibration laboratories.

(21) "ISO/IEC 17043" means the general requirements established by the ISO/IEC for proficiency testing.

(22) "Laboratory control sample (LCS)" means a quality control sample that includes each of the target analytes at the mid-range of the calibration spiked into an analyte free matching matrix or a matrix that is as closely representative of the matrix being analyzed as possible, in order to evaluate the efficiency of the preparatory/extraction process. The LCS is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.

(23) "Laboratory quality assurance" means a set of operating principles that enable laboratories to produce defensible data of known accuracy and precision and includes employee training, equipment preventative maintenance procedures, calibration procedures, and quality control testing.

(24) "Laboratory test sample" means all sample increments collected from one test batch combined together into one sample container from which quality assurance compliance testing is conducted.

~~(9) "Limited access area" means a building, room, or other contiguous area upon the registered premises where marijuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale, under the control of the licensee.~~

(25) "Limit of detection (LOD)" means the lowest quantity of a substance or analyte that can be distinguished from the absence of the substance within a stated confidence limit.

(26) "Limit of quantitation (LOQ)" means the lowest concentration of an analyte in the specific matrix that can be reliably quantified while also meeting predefined goals for bias and imprecision.

(27) "Marijuana" has the meaning provided for under 16-12-102, MCA, and ARM 42.39.102.

(28) "Marijuana concentrate and extract" or "concentrate and extract" has the meaning provided for under 16-12-102, MCA, and ARM 42.39.102.

(29) "Marijuana infused products" has the meaning provided for under 16-12-102, MCA, and ARM 42.39.102.

~~(10)~~ (30) "Marijuana items" ~~means:~~ has the meaning provided for under ARM 42.39.102.

~~(a) marijuana;~~

~~(b) usable marijuana;~~

~~(c) dried leaves and flowers of the marijuana plant;~~

~~(d) marijuana derivatives, concentrates, extracts, resins, infused products, edible products, ointments, tinctures, suppositories, topicals; and~~

~~(e) other marijuana-related products.~~

(31) "Matrix" means the substances that are present in a sample except for the analytes of interest.

(32) "Matrix spike (MS)" means a quality control sample that is prepared by adding a known concentration of target analytes to a laboratory test sample spiked at a mid-range concentration of the calibration to evaluate matrix interference effects. The MS is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.

(33) "Method blank (MB)" means a quality control sample that is prepared using an analyte free matching matrix or a matrix that is as closely representative of the matrix being analyzed as possible to verify the absence of contamination in the preparatory/extraction process. The MB is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.

(34) "Method detection limit (MDL)" means a minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero as determined from analysis of a sample containing the analyte in a given matrix.

(35) "Method reporting limit (MRL)" means the lowest amount of an analyte in a sample that can be quantitatively determined with stated, acceptable precision and accuracy under stated analytical conditions.

(36) "Preventative action" means a proactive action implemented to eliminate the cause of a potential nonconformance or other quality problem before it occurs.

~~(11)~~ (37) "Process lot" ~~has the meaning provided for under ARM 42.39.102~~ means:

(a) any amount of marijuana concentrate or extract of the same type and processed in the same 48-hour period, using the same extraction methods, standard operating procedures, and test batches from the same or different harvest lots; or

(b) any amount of marijuana products of the same type and processed in the same 48-hour period, using the same ingredients, standard operating procedures, and test batches from the same or different harvest lots or process lots of marijuana concentrate or extract.

(38) "Proficiency test" means an evaluation of a testing laboratory's performance against pre-established criteria by means of interlaboratory comparisons of test measurements.

~~(12)~~ (39) "Property owner permission form" ~~means a completed, signed, and notarized form which gives an applicant, or licensee renting or leasing the property, permission from the property owner to operate the testing laboratory on the property~~ has the meaning provided for under ARM 42.39.102.

(40) "Quality control sample" means a sample that is produced and used by a testing laboratory for the purpose of ensuring the quality of the data and results. Quality control samples include initial calibration verifications, continuing calibration verifications, laboratory control samples, method blanks, replicates, and matrix spikes. When quality control samples fail it is assumed the preparatory/extraction process, instrumentation, procedures, equipment, etc., are out of statistical control.

(41) "Raw data" means any testing laboratory worksheet, records, memorandum, notes, or exact copies thereof, that are the result of original observations and activities of testing laboratory study and are necessary for the reconstruction and evaluation of the report of that study.

(42) "Replicate (REP)" means a quality control sample that is a sub-sample of a laboratory test sample used to evaluate the reproducibility of the preparatory/extraction process. The REP is prepared in the same manner as the rest of the laboratory test samples in the analytical batch.

(43) "Sample increment" means an individual portion of material collected from a test batch.

(44) "Sample integrity" means maintaining marijuana items in a manner that prevents the degradation of testing laboratory results over time between the harvest/process lot, test batch, laboratory test sample, and customer product. Sample integrity factors include consistent storage, temperatures, humidity, and light exposure along with proper handling, transport, and tampering prevention.

(45) "Secondary source standard" means chemical standards sourced from a different supplier or from a different lot number of the same supplier.

(46) "Seed-to-sale tracking system" has the meaning provided for under ARM 42.39.102.

(47) "Standard operating procedure (SOP)" means a written document that provides detailed instructions for the performance of all aspects of an analysis, operation, or action.

~~(13)~~ (48) "Test batch" ~~means a portion of a harvest or process lot that has been submitted for quality assurance testing~~ has the meaning provided for under ARM 42.39.102.

~~(14)~~ (49) "THC" ~~means tetrahydrocannabinol~~ has the meaning provided for under ARM 42.39.102.

~~(15)~~ (50) "THCA" ~~means tetrahydrocannabinolic acid~~ has the meaning provided for under ARM 42.39.102.

(51) "Total CBD" means the sum of CBD and CBDa calculated using the following equation:

(a) Total CBD mg/g=(CBDa mg/g x 0.877)+CBD mg/g

(52) "Total THC" means the sum of THC and THCa calculated using the following equation:

(a) Total THC mg/g=(THCa mg/g x 0.877)+THC mg/g

(53) "Validation" means the confirmation, by examination and objective evidence, that the requirements for an analytical method are fulfilled.

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-303, 50-46-307, 50-46-308, 50-46-310, 50-46-318, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.307 ~~MARIJUANA~~ TESTING LABORATORY QUALITY ASSURANCE PROGRAM (1) The testing laboratory shall develop and implement a quality assurance program to assure the reliability and validity of the analytical data produced by the testing laboratory. The quality assurance program shall, at a minimum, include a written quality assurance plan or manual that addresses the following:

(a) remains the same.

(b) testing laboratory organization and employee training and responsibilities, including good laboratory practice (GLP);

(c) through (i) remain the same.

(j) ~~quality assurance~~ laboratory test sample retention and disposal;

(k) through (2) remain the same.

(3) All testing laboratory personnel ~~involved in pre-analytic, analytic, and/or post-analytic testing processes for marijuana, marijuana concentrates, marijuana extracts, or marijuana-infused products~~ shall review the quality assurance plan upon revision or at least annually.

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-304, 50-46-311, 50-46-326, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.309 ~~MARIJUANA~~ TESTING LABORATORY QUALITY CONTROL

(1) The ~~marijuana~~ testing laboratory shall use ~~laboratory~~ quality control ~~(LQC)~~ samples and adhere to good laboratory practices (GLP) in the performance of all quality assurance testing according to the following specifications:

(a) the testing laboratory shall analyze quality control samples in the same manner as the testing laboratory analyzes marijuana, marijuana concentrates~~,~~ ~~marijuana~~ and extracts, or marijuana-infused product ~~quality assurance~~ laboratory testing samples;

(b) the testing laboratory shall use at least one negative control and one positive control in each analytical batch for each target organism during microbial testing;

(c) remains the same.

(d) if the positive and negative controls produce the expected results then the ~~results for each~~ laboratory test sample results in the analytical batch are valid and must be reported.

~~(2) If the result of the quality control analysis is outside the laboratory's specified acceptance criteria, listed in the laboratory's quality assurance plan, specific method standard operating procedure (SOP), or the product instructions for use, the laboratory shall determine the cause and take corrective action steps to remedy the problem until the result is within the specified acceptance criteria.~~

~~(3)~~ (2) The testing laboratory shall prepare and analyze at least one each of the following quality control samples for each analytical ~~chemistry~~ batch:

(a) method blank (MB);

(b) laboratory control sample (LCS)~~:~~;

(c) ~~laboratory~~ replicate ~~sample~~ (REP); and

(d) ~~laboratory~~ matrix spike ~~sample~~ (MS).

(3) The testing laboratory shall analyze an initial calibration verification (ICV) sample immediately following an instrument calibration.

(4) The testing laboratory shall analyze, at minimum, a continuing calibration verification (CCV) sample at the beginning of each analytical sequence and at least every 10 laboratory test samples thereafter.

(5) If ~~the result of the~~ any quality control ~~analysis~~ sample result is outside the testing laboratory's specified acceptance criteria~~,~~ listed in the testing laboratory's quality assurance plan ~~or~~, specific method SOP, or product instructions for use, the testing laboratory shall determine the cause and take corrective action steps to remedy the problem until the result is within the specified acceptance criteria.

(6) If any quality control sample produces a result outside the specified acceptance criteria, the testing laboratory cannot report the result and the entire analytical batch cannot be released for ~~retail~~ sale. The testing laboratory shall determine the cause and take steps to remedy the problem until the result is within the specified acceptance criteria.

(7) The testing laboratory must calculate the method detection limit (MDL) and method reporting limit (MRL) for each chemical method analysis according to the United States Food and Drug Administration (USFDA) "Elemental Analysis Manual for Food and Related Products," the United States Environmental Protection Agency (USEPA) "Definition and Procedure for the Determination of the Method Detection Limit, Revision 2," or a substantially equivalent standard.

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-304, 50-46-311, 50-46-326, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.311 ~~MARIJUANA~~ TESTING LABORATORY REQUIRED PROFICIENCY TESTING (1) For a testing laboratory to become ~~approved~~ endorsed to conduct quality assurance testing, the testing laboratory must, at its own expense, meet the proficiency testing requirements of this subchapter.

(2) A testing laboratory shall successfully participate in a proficiency testing program(s):

(a) through (c) remain the same.

(3) The testing laboratory shall report all analytes available by the proficiency testing program provider and for which the testing laboratory ~~licensee~~ is required to test as required under this subchapter.

(4) The testing laboratory shall participate in the proficiency testing program by following the testing laboratory's existing standard operating procedures for testing marijuana or marijuana-infused products.

(5) The testing laboratory shall rotate the proficiency testing among all of the laboratory testing personnel who perform a specific test method(s) or have multiple analysts perform the same proficiency test, when sample quantity/volume permits.

(6) Testing ~~L~~laboratory ~~testing~~ personnel who participate in a proficiency testing program shall sign the corresponding analytical reports and proficiency providers attestation forms, if provided, to certify that the proficiency testing program was conducted in the same manner as the laboratory tests marijuana or marijuana-infused products.

(7) remains the same.

(8) The testing laboratory shall request the proficiency testing program provider to send all proficiency data and results concurrently to the state laboratory, when the data and results become available. If the proficiency provider does not provide this service then it is the responsibility of the testing laboratory to provide the proficiency testing program data and results to the state laboratory within three business days after the testing laboratory receives notification of their test results from the proficiency testing program provider.

(9) The testing laboratory must maintain a paper and/or electronic copy of all proficiency testing records, including analytical data, quality control, standard curves, spreadsheets, calculations, and worksheets and a copy of the proficiency testing provider report forms for a period of three years. The records must be easily and readily available to the state laboratory ~~staff or state auditors~~ upon request.

(10) When performing a proficiency test, a ~~marijuana~~ testing laboratory may not:

(a) perform multiple analyses (such as replicates or duplicates) that are not normally performed in the course of analysis of a routine laboratory test sample;

(b) remains the same.

(c) permit anyone other than bona fide testing personnel who perform the analyses on a day-to-day basis for the testing laboratory to participate in the generation of data or reporting of results;

(d) discuss the results of proficiency testing with any other testing laboratory until after the deadline set for receipt of results by the proficiency testing provider;

(e) discuss the results of a proficiency testing ~~audit~~ across sites or locations, if the testing laboratory has multiple testing sites, until after the deadline set for receipt of results by the proficiency testing provider;

(f) send proficiency testing samples or portions of samples to another testing laboratory to be tested; or

(g) knowingly receive a proficiency testing sample from another testing laboratory for analysis and fail to notify the state laboratory of the receipt of the other testing laboratory's sample within five business days of discovery.

(11) The state laboratory may also provide inter-laboratory proficiency testing samples to ~~laboratory licensees~~ testing laboratories in order to ensure that Montana ~~marijuana~~ testing laboratories are providing consistent and uniform results.

(12) For the purposes of this subchapter, the ~~department~~ state laboratory adopts and incorporates by reference ISO/IEC 17043:2010, which specifies general requirements for the competence of providers of proficiency testing schemes and for the development and operation of proficiency testing schemes. A copy of the publication may be obtained from the American National Standards Institute (ANSI), 1899 L St. NW, 11th Floor, Washington, DC 20036; https://webstore.ansi.org/SDO/ISO.

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-304, 50-46-311, 50-46-326, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.313 ~~MARIJUANA~~ TESTING LABORATORY SATISFACTORY AND UNSATISFACTORY PROFICIENCY TEST PERFORMANCE (1) The ~~marijuana~~ testing laboratory shall be deemed to have "successfully" participated in a proficiency testing program for an analyte tested in a specific method if the test results demonstrate a "satisfactory," "passed," or otherwise proficient performance determination by the proficiency testing program provider.

(2) The ~~marijuana~~ testing laboratory shall be deemed to have "unsuccessfully" participated in a proficiency testing program for an analyte tested in a specific method if the test results demonstrate an "unsatisfactory," "unacceptable," "questionable," or "failed or otherwise deficient" performance determination by the proficiency testing program provider.

(3) If a ~~marijuana~~ testing laboratory is notified by a proficiency provider of an "unsuccessful" result for an analyte tested in a specific method, the testing laboratory may continue to report test results for the analyte(s) if all of the following conditions are met:

(a) the testing laboratory notifies the state laboratory of the "unsuccessful" proficiency result in writing within ~~five~~ three business days of receiving the report from the proficiency provider;

(b) the testing laboratory has "successfully" participated in a proficiency program for the failed analyte(s) in the specific method in the previous six months;

(c) the testing laboratory submits to the state laboratory, for approval, a corrective~~/~~ and preventative action plan detailing how the testing laboratory will proceed to determine the cause of the failure within 10 business days of receiving the "unsuccessful" performance determination by the proficiency testing provider; and

(d) within 30 days of plan approval by the state laboratory, submit a corrective~~/~~ and preventative action final report describing the cause of the failure, the corrective action, and processes that will ensure the effectiveness of the corrective action.

(4) The state laboratory will approve or reject a corrective action plans and/or final corrective action reports as soon as reasonably practicable.

(5) If a marijuana testing laboratory is notified by a proficiency provider of an "unsuccessful" result for an analyte tested in a specific method and the testing laboratory has not "successfully" participated in a proficiency program for the failed analyte(s) in the previous six months, the testing laboratory may not continue to report test results for the analyte(s) until all of the following conditions are met:

(a) the testing laboratory notifies the state laboratory of the "unsuccessful" proficiency result in writing within five three business days of receiving the report from the proficiency provider;

(b) the testing laboratory submits to the state laboratory, for its approval, a corrective/ and preventative action plan detailing how the testing laboratory will proceed to determine the cause of the failure within 10 business days of receiving the "unsuccessful" performance determination by the proficiency testing provider;

(c) within 30 days of plan approval by the state laboratory, submit a corrective/ and preventative action final report demonstrating the cause of the failure, the corrective action, and processes that will ensure the effectiveness of the corrective action; and

(d) remains the same.

AUTH: 50-46-344 16-12-202, 16-12-209, MCA
IMP: 50-46-304, 50-46-311, 50-46-329, 50-46-344 16-12-202, 16-12-209, MCA

37.107.315 MARIJUANA TESTING LABORATORY FAILED LABORATORY TEST SAMPLES (1) If the results of quality assurance testing for any analyte/method exceed the action limits levels defined in ARM 37.107.316, then the laboratory test sample and related lot or test batch has "failed" quality assurance testing.

(2) When a marijuana testing laboratory performs quality assurance testing, the testing laboratory must verify that the following quality control criteria are within acceptable limits based upon the testing laboratory's method specific standard operating procedures, the testing laboratory quality assurance plan, and the manufacturer's instructions for use, if applicable:

(a) remains the same.

(b) method blank;

(c) laboratory control sample(s);

(b) coefficient of determination (r^2);

(c) quality control samples:

(i) ICV, CCV, LCS, MB, REP, and MS;

(d) positive and negative controls; and

(e) laboratory replicate values;

(f) matrix spike sample(s);

(g) continuing calibration verification sample;

(h) sample preparation controls; and

(i) (e) crossing cycle thresholds.

(3) If the quality control criteria for initial quality assurance testing are within acceptable limits, then the results of all individual laboratory test samples within the

analytical batch are considered valid, including "failed" laboratory test samples and must be reported

(4) A ~~provider~~ licensee may request that the testing laboratory resample the failed batch or lot for repeat testing within seven calendar days of receiving notice from the testing laboratory of any failed testing and resampled analyses must be completed by the testing laboratory within 30 days of receiving the request from the ~~provider~~ licensee.

(5) and (6) remain the same.

(7) The ~~provider~~ licensee is responsible for the costs of resampling and retesting.

(8) If the quality control criteria for initial quality assurance testing are not within acceptable limits, then the results of all ~~individual~~ laboratory test samples within an analytical batch are considered invalid (failed run) and the entire run must be repeated with new quality controls and not reported.

(9) The testing laboratory should document and investigate failed runs, as part of the testing laboratory's quality assurance plan, to determine the root cause of the failure and whether corrective and preventative action measures are warranted.

(10) A ~~provider~~ licensee is not permitted to sell or transfer to ~~a registered cardholder,~~ customers marijuana items that have a failed quality assurance test.

(11) Failed harvest lots, process lots, or test batches may be remediated as long as the remediation method does not impart any substance or effect to the usable marijuana, marijuana concentrates and extracts, or marijuana-infused products that may have a toxic or deleterious effect on the health of the ~~consumer~~ customer.

(12) Remediation methods used on specific lots or batches of marijuana or marijuana-infused products that have failed initial quality assurance testing must be disclosed to the state laboratory ~~and to the Medical Marijuana Program~~ prior to remediation.

(13) No remediated harvest lots, process lots, or test batches may be sold or transferred until the completion and successful passage of all quality assurance testing, and the results certified in a certificate of analysis, as required in these rules and Montana statute.

(14) With the exception of moisture analysis or residual solvent screening, a remediated laboratory test sample from a failed harvest lot, process lot, or test batch that fails quality assurance testing cannot be remediated again and the harvest lot, process lot, or test batch must be destroyed. Harvest lots, process lots, or test batches that fail initial quality assurance testing for moisture analysis or residual solvent screening may be remediated and retested a maximum of two times. Test batches that fail pesticide analysis cannot be remediated and shall be destroyed.

(15) ~~A~~ The testing laboratory ~~licensee~~ must document all sampling, resampling, testing, retesting, remediation attempts, and ~~destruction that are a result of failing a test~~ results under this subchapter.

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-304, 50-46-311, 50-46-326, 50-46-329, 50-46-344~~ 16-12-202, 16-12-209, MCA

37.107.316 ~~MARIJUANA~~ TESTING LABORATORY QUALITY ASSURANCE TESTING REQUIREMENTS (1) Except as provided in (10), a ~~provider~~ licensee must submit for testing a sample of every test batch from a harvest lot of marijuana and process lots of marijuana-infused products, extracts, and concentrates intended for use by a ~~registered cardholder~~ customer prior to selling or transferring the marijuana item to a ~~registered cardholder~~ customer.

~~(2) Usable marijuana lots consisting of dried leaves and flowers must be tested for the following:~~

~~(a) cannabinoid profile;~~

~~(b) moisture analysis;~~

~~(c) foreign matter screening;~~

~~(d) microbiological screening; and~~

~~(e) pesticides screening.~~

(2) All marijuana items intended for direct sale or transfer to customers shall be tested in its final form. The addition of any ingredient after final quality assurance compliance testing will require retesting.

~~(3) Marijuana concentrate and extract lots must be tested for the following:~~

~~(a) cannabinoid profile;~~

~~(b) microbiological screening;~~

~~(c) residual solvents screening; and~~

~~(d) pesticides screening.~~

~~(4) Marijuana-infused products must be tested for the following:~~

~~(a) cannabinoid profile; and~~

~~(b) microbiological screening.~~

~~(5)~~ (3) The cannabinoid profile/potency for each sample must include:

(a) through (f) remain the same.

~~(6)~~ (4) The laboratory test sample and related lot or test batch fail quality assurance testing for moisture analysis if the results ~~exceed moisture content of~~ are greater than 12.0 ~~percent~~ %.

~~(7)~~ (5) The laboratory test sample and related lot or test batch fail quality assurance testing for filth and foreign matter screening if the results ~~exceed~~ are greater than the following ~~limits~~ action levels:

(a) ~~five percent~~ 5.0% of stems 3mm or more in diameter; and

(b) ~~two percent~~ 2.0% of seeds or other foreign matter.

~~(8)~~ (6) The laboratory test sample and related lot or test batch fail quality assurance testing for microbiological screening if the results ~~exceed~~ are greater than the following ~~limits~~ action levels:

(a) ~~Salmonella~~ *Salmonella*: non-detectable in ~~a~~ 1.0 gram of material;

(b) ~~E. Coli~~ Shiga-toxin producing *Escherichia Coli* (STEC): non-detectable in ~~a~~ 1.0 gram of material; and

~~(c) Culturable Mold: more than 10,000 colony forming units (CFU) per gram of material;~~

(c) Pathogenic *Aspergillus* species *A. flavus, A. fumigatus, A. niger, and A. terreus*: Each non-detectable in 1.0 gram of material.

(7) Microbiological testing using molecular methods must include an enrichment step.

(8) The laboratory test sample and related lot fail quality assurance testing for mycotoxins if the results are greater than the following action level:

~~(d)~~ (a) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg; and

~~(e)~~ (b) Ochratoxin A: 20 µg/kg ~~of substance~~.

(9) A laboratory test sample and related lot or test batch fail quality assurance testing for residual solvents if the results ~~exceed~~ are greater than the ~~limits~~ action levels provided in ~~the~~ table ~~below~~ 1.0.

Table 1.0

	~~Chemical Abstract Services~~	
Residual Solvents	(CAS) Registry Number	Action Level ppm
Acetone	67-64-1	5,000
Benzene	71-43-2	2
Total Butanes	See[1]	5,000
* n-butane	106-97-8	
* iso-butane	75-28-5	
Chloroform	67-66-3	2
Cyclohexane	110-82-7	3,880
Dichloromethane	75-09-2	600
Ethyl acetate	141-78-6	5,000
Heptane	142-82-5	5,000
Total Hexanes	See[2]	290
* n-hexane	110-54-3	
* 2-methylpentane	107-83-5	
* 3-methylpentane	96-14-0	
* 2,2-dimethylbutane	75-83-2	
* 2,3-dimethylbutane	79-29-8	
Isopropanol (2-propanol)	67-63-0	5,000
Methanol	67-56-1	3,000
Total Pentanes	See[3]	5,000
* n-pentane	109-66-0	
* iso-pentane	78-78-4	
* neo-pentane	463-82-1	
Propane	74-98-6	5,000
Toluene	108-88-3	890
Total Xylenes	See[4]	2,170
* 1,2-dimethylbenzene	95-47-6	
* 1,3-dimethylbenzene	108-38-3	
* 1,4-dimethylbenzene	106-42-3	

1 Total butanes should be calculated as sum of n-butane and iso-butane.
2 Total hexanes should be calculated as sum of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane and 2,3-dimethylbutane.
3 Total pentanes should be calculated as sum of n-pentane, iso-pentane, and neo-pentane.

4 Total xylenes should be calculated as sum of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene.

(10) Heavy metals will be tested at random. A laboratory test sample and related lot or test batch fail quality assurance testing for heavy metals if the results ~~exceed~~ are greater than the ~~limits~~ action levels provided in ~~the~~ table ~~below~~ 2.0.

~~Heavy Metals~~

Table 2.0

Heavy Metals	~~Limits; Unprocessed/Dry Flower~~ Action Level ppm; Inhalable Marijuana Items	~~Limits; Extract~~ Action Level ppm; Other Marijuana Items
Inorganic ~~a~~Arsenic	~~2.0 µg/g~~ 0.2	~~10 µg/g~~ 1.5
Cadmium	~~0.82 µg/g~~ 0.2	~~4.1 µg/g~~ 0.5
Lead	~~1.2 µg/g~~ 0.5	~~6.0 µg/g~~ 0.5
Mercury	~~0.4 µg/g~~ 0.1	~~2.0 µg/g~~ 3.0

(11) A laboratory test sample and related lot or test batch fail quality assurance testing for pesticides if the results ~~exceed~~ are greater than the ~~limits~~ action levels provided in ~~the~~ table ~~below~~ 3.0.

~~Pesticides~~

Table 3.0

~~Analyte~~ Pesticides	~~Chemical Abstract Services~~ (CAS) Registry Number	Action Level ~~ppl~~ ppm; ~~Unprocessed/~~Dry Flower	Action Level ppm; Concentrates and Extracts
Abamectin	71751-41-2	0.5	2.5
Acequinocyl	57960-19-7	2	10
Bifenazate	149877-41-8	0.2	1
Bifenthrin	82657-04-3	0.2	1
Chlormequat ~~Choloride~~ Chloride	999-81-5	1	5
Cyfluthrin	68359-37-5	1	5
Daminozide	1596-84-5	1	5
Etoxazole	153233-91-1	0.2	1
Fenoxycarb	72490-01-8	0.2	1
Imazalil	35554-44-0	0.2	1
Imidacloprid	138261-41-3	0.4	2
Myclobutanil	88671-89-0	0.2	0.6
Paclobutrazol	76738-62-0	0.4	2
Pyrethrins†	8003-34-7	1	5
Spinosad	168316-95-8	0.2	1
Spirotetramat	203313-25-1	0.2	1
Trifloxystrobin	141517-21-7	0.2	1

† Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-14-2 respectively).

(12) ~~Providers~~ Licensees must adhere to testing requirements for all marijuana and marijuana products intended for sale or transfer to ~~cardholders~~ customers.

(a) remains the same.

(b) A ~~provider~~ licensee has the option to forgo testing of usable marijuana, including trim and manicure, if that usable marijuana is subject to further processing before sale or transfer to ~~cardholders~~ customers.

(c) Marijuana extract and concentrate that is intended for direct sale or transfer to ~~cardholders~~ customers must be tested for:

(i) through (vi) remain the same.

(d) Marijuana extract and concentrate that is intended for further processing before direct sale or transfer to ~~cardholders~~ customers must be tested for:

(i) through (iv) remain the same.

(e) ~~Cannabinoid~~ Marijuana infused products intended for human consumption, ingestion, ~~and cannabinoid~~ or used as suppositories, topicals, and transdermal patches must be tested for:

(i) cannabinoid profile/potency; and

(ii) microbiological.

(f) All ~~cannabinoid~~ marijuana products listed in (e) must use marijuana extract and concentrate that has passed quality assurance testing requirements as set forth in (d).

AUTH: ~~50-46-344~~ 16-12-202, 16-12-209, MCA
IMP: ~~50-46-303, 50-46-304, 50-46-308, 50-46-311, 50-46-326, 50-46-344~~ 16-12-202, 16-12-209, MCA

5. STATEMENT OF REASONABLE NECESSITY

In 2021, Montana's 67th Legislature passed, and the Governor signed, House Bill (HB) 701, which amends the Montana Marijuana Regulation and Taxation Act, codified at 16-12-101, et seq., MCA. With respect to marijuana testing laboratories, the bill shifts responsibility for licensing of testing laboratories from the Department of Public Health and Human Services (department) to the Department of Revenue (DOR) and creates a new process under which the department is responsible for the endorsement of a testing laboratory to perform the required testing before a testing laboratory may apply for licensure and renewal of licensure. The bill also repeals the department's rulemaking authority under Title 50, chapter 46, part 3, MCA and in its place creates new rulemaking authority under 16-12-202 and 16-12-209, MCA.

These new rules and proposed amendments are designed to implement HB 701. The proposed rulemaking establishes testing laboratory endorsement requirements, sampling protocols, and parameters under which the department may suspend the licensure of a testing laboratory. The proposed rulemaking also updates quality control measures, contaminate testing requirements, terminology, and statutory

references to align the rules with the new law. The proposed rulemaking is necessary to comply with changes to the law effected by HB 701 and to ensure marijuana products are tested in a manner that protects the safety of Montana consumers.

NEW RULE I

The department is proposing New Rule I to establish quality sampling protocols for testing laboratories. The results of any laboratory analysis are only as good as the sample collected. If representative samples are inconsistently collected between testing laboratories it can result in public safety risks, low consumer confidence, and negative effects on the cannabis industry. The rule is designed to provide for standardization of sampling practices among testing laboratories and to ensure consistent results so that consumers receive reliable information about marijuana products.

The rule is necessary to implement the requirement under 16-12-209, MCA, for the department to establish a sampling protocol and to ensure testing laboratories follow uniform standards and protocols for sampling and testing.

NEW RULE II

Although under HB 701, DOR licenses testing laboratories, 16-12-202, MCA, authorizes suspension of testing laboratory licensure by the department if raw testing data indicates the testing laboratory is providing inconsistent results. The statute requires suspension to be based upon rules adopted by the department. New Rule II sets forth the standard upon which licensure of a testing laboratory may be suspended by the department. The rule is necessary to implement the requirements of the statute, inform testing laboratories of the suspension criteria, and the right to a fair hearing before the Office of Administrative Hearings.

ARM 37.107.301

The department is proposing to amend ARM 37.107.301 to remove requirements for licensure and implement requirements for endorsement. These proposed amendments are necessary to align the rule with the requirements of HB 701 and the shifting of licensing authority to DOR. The department is also proposing to update terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules.

ARM 37.107.302

The department is proposing to amend ARM 37.107.302 to update requirements applicable to testing laboratories. The amendments remove requirements for testing laboratories that are unrelated to testing standards, practices, and procedures. The amendments also update method validation and standard testing laboratory practices. The proposed amendments are necessary to align the rule with the department's new rulemaking authority under HB 701. The department is also proposing to update terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules.

The department proposes to remove language in (7) and (9) because it is redundant and found elsewhere in rule.

The department proposes to remove language in (8) as the seed-to-sale tracking system cannot adequately track the return movement of marijuana products obtained for purposes of testing.

ARM 37.107.303

The department proposes to amend ARM 37.107.303 by adopting necessary definitions for new terminology, and amending existing terminology for clarity and to conform to HB 701. Certain definitions refer directly to the DOR's ARM 42.39.102 to ensure consistency in the use of terms between the department and DOR as part of the dual oversight for testing laboratories established under HB 701. The proposed revisions are necessary to clarify the meaning of terms used throughout the rules and to provide for a better understanding of the rules.

ARM 37.107.307

The department is proposing to amend ARM 37.107.307 for clarity and to update the terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules.

ARM 37.107.309

The department is proposing to amend ARM 37.107.309 for clarity and to update the terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules. The department is also proposing removal of language in (2) because it is duplicative of language in (5). Furthermore, the department proposes adopting (3) concerning an initial calibration verification (ICV) quality control sample to increase quality control measures and standardization between all testing laboratories.

ARM 37.107.311

The department is proposing to amend ARM 37.107.311 for clarity and to update the terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules. The proposed amendments do not substantively alter requirements of the existing rule.

ARM 37.107.313

The department is proposing to amend ARM 37.107.313 for clarity and to update the terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules. The proposed amendments do not substantively alter requirements of the existing rule.

ARM 37.107.315

The department is proposing to amend ARM 37.107.315 by clarifying quality control criteria for the determination of failed laboratory test sample results. The department proposes adopting language in (14) to specify that laboratory test samples which fail pesticide testing do not qualify for remediation. Pesticides pose dangerous health

risks to consumers and sufficient remediation procedures are not available. The department is also proposing to update the terminology within the rule to be consistent with the new law and ensure consistency of terms used throughout the rules.

ARM 37.107.316

The department is proposing to amend ARM 37.107.316 by removing language in (2) that is redundant with language under (12). The department is proposing new language to ensure all marijuana products are tested in their final form and not altered after quality assurance compliance testing is completed. This requirement is designed to ensure testing results are representative of the product sold to the consumer.

The department is also proposing amendments to microbiological testing to provide a more targeted and uniform approach to detecting human pathogenic contaminates in marijuana products. The reference to E. coli has been amended to Shiga-toxin producing *Escherichia Coli* (STEC). STEC is a known human pathogenic species of E. coli. Additionally, the reference to culturable mold has been altered to refer to pathogenic *Aspergillus* species *A. flavus, A. fumigatus, A. niger, and A. terreus*. These are the four known mold species that have been found to cause human health issues particularly in immunocompromised consumers. These amendments provide a more meaningful metric for determining specific harmful mold and E. coli in cannabis.

The department is proposing amendments to (10) to bring action levels for heavy metal testing in line with nationally recognized publications and other states' cannabis testing programs. Heavy metal exposure is harmful to human health. The cannabis plant is a known bio-accumulator and is capable of absorbing heavy metals from its surrounding environment. The proposed amendments to heavy metal action levels are designed to ensure consumer safety and are attainable using today's available instrumentation.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on October 28, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.14.101, 42.14.106, 42.14.113, 42.14.202, 42.14.203, 42.14.205, 42.14.303, 42.14.1002, 42.14.1003, 42.14.1102, 42.14.1105, 42.14.1201, and 42.14.1202 and the repeal of ARM 42.14.206, 42.14.207, 42.14.302, 42.14.304, 42.14.1001, and 42.14.1101 pertaining to lodging facility sales and use taxes and rental vehicle sales and use taxes	))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 13, 2021, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 26, 2021. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 66th and 67th Montana Legislatures enacted legislation that impacts how the department administers the state's lodging facility use tax and the sales and use tax on rental cars. House Bill 175 (2019) removed "allowable state reimbursement" language from 2-18-501, MCA, which affects how combined charge for services are calculated in the subchapter. Senate Bill 338 (2019) amended 15-68-102, MCA, to increase the tax rate on accommodations and campgrounds from three percent to four percent. Senate Bill 52 (2021) provides substantial revisions to the state's lodging facility use tax under 15-65-101, *et. seq.*, MCA, and the sales use tax on rental cars in 15-68-101, *et .seq.*, MCA, to provide greater synchronicity and clarity of the two tax types. Based on this legislation, it is necessary for the department to amend the rules proposed in this rulemaking.

The department proposes other amendments to ARM 42.14.101, 42.14.202, and 42.14.303, the basis for which arise from judicial decisions regarding taxpayer lodging facility use tax and the sales use tax disputes with the department. (*See,*

e.g. Mont. Dep't of Revenue v. Priceline.com, Inc., 2015 MT 241, and Boyne USA, Inc. v. DOR, 2021 MT 155).

The department also proposes several amendments which: update language usage and style of the rules; improve accuracy and consistency of rule requirements with statute and the recent legislation; transfer content between rules better suited to the subject matter; update cross references and removes form names which are subject to change; and increase overall clarity of the rules. Based on these changes, the department proposes to repeal the rules listed in number 5 which will become obsolete or inconsistent with current law or department processes.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.14.101 DEFINITIONS The following definitions apply to this subchapter:

~~(1) "Allowable state reimbursement" means the dollar amount stated in 2-18-501, MCA.~~

~~(2) "Average daily accommodation charge" (ADAC) is the average daily room rate for single occupancy for all units rented in a facility.~~

~~(3) "Facility" as defined in 15-65-101, MCA and "Accommodations" as defined in 15-68-101, MCA are synonymous and includes a building, group of buildings, or an area recognized as a single entity.~~

(1) "Accommodations" means accommodations, as defined in 15-68-101, MCA.

~~(4)~~ (2) "Gross receipts" means the total gross sales received by a seller for use of ~~a lodging unit~~ accommodations, whether the charges were received in ~~money or otherwise, including all receipts,~~ cash, credits, and property or services ~~of any kind or nature~~.

~~(5) "Lodging" means accommodation intended for the purpose of sleeping or resting.~~

~~(6)~~ (3) "Lodging facility sales and use tax," for the purpose of these rules, means the ~~4 percent~~ lodging facility use tax~~,~~ as it applies to Title 15, chapter 65, MCA, and the ~~3 percent~~ sales tax~~,~~ as it applies to Title 15, chapter 68, MCA.

~~(7) "Lodging unit" means an individual sleeping room or suite used within a facility. This also includes, but is not limited to a single area within a campground, dormitory, hostel, guest ranch, or vacation rental.~~

~~(8)~~ (4) "Nontaxable receipts" means exempt sales, as defined in ARM 42.14.303. Also included are sales deemed by the seller as uncollectible ~~and~~ which are written off during a ~~specific quarterly period~~ calendar quarter, and any discounts which may have been included in gross receipts but are not part of the taxable sales ~~charge~~ price to the ~~user~~ purchaser.

~~(9)~~ (5) "Outfitting facility" means a facility that ~~may~~:

~~(a) use one or more permanent structures to~~ furnishes ~~sleeping~~ accommodations ~~or bathhouse facilities~~ to guests~~;~~ and

~~(b)~~ offers hunting, fishing, or recreational services in conjunction with the services of an outfitter.

~~(10) "Owner or operator of a facility" means any person or organization that rents a lodging facility to the public and is ultimately responsible for the financial~~

~~affairs of the facility. Such person may be an individual, corporation, partnership, estate, trust, association, joint venture, vacation rental property manager, or other unincorporated group or entity. Owner or operator also includes all religious, education, charitable, and social organizations or societies which are not excluded by the provisions of Title 15, chapter 65, MCA, or Title 15, chapter 68, MCA, and all governmental entities at the federal, state, and local levels.~~

~~(11) "Permanent structure" means any structure that has an impermeable floor and is completely roofed and walled. This includes but is not limited to:~~

~~(a) cabins;~~

~~(b) bunkhouses;~~

~~(c) shacks;~~

~~(d) mobile homes;~~

~~(e) yurts; and~~

~~(f) luxury tents.~~

~~(12) "Public" or "general public" are synonymous and means a facility that charges for a lodging unit and other services, and is presumed to serve the general public unless proven otherwise.~~

~~(13)~~ (6) "Purchaser" means a purchaser, as defined in 15-68-101, MCA ~~is synonymous with the word "user"~~.

~~(14)~~ (7) "Rental agreement" ~~is~~ means an agreement between a seller and a ~~user~~ purchaser. Such an agreement provides ~~lodging~~ accommodations to the ~~user~~ purchaser for a specified period of time in exchange for a specified payment amount or other ~~form of compensation~~ consideration.

(8) "Rental vehicle sales and use tax," for the purpose of these rules, means the sales tax on the base rental charge for rental vehicles as it applies in Title 15, chapter 68, MCA.

~~(15)~~ (9) "Sales price" means sales price, as defined in 15-68-101, MCA ~~is synonymous with the term "accommodation charge" as defined in 15-65-101, MCA~~.

~~(16)~~ (10) "Seller" means a seller, as defined in 15-68-101, MCA ~~and includes an owner or operator of a facility~~.

~~(17) "User" means the person(s) renting and paying for the lodging facilities.~~

AUTH: 15-1-201, 15-65-102, 15-68-801, MCA
IMP: 15-65-101, 15-68-101, MCA

42.14.106 REGISTRATION AND PERMIT (1) Every seller required to collect the lodging facility sales and use tax must register ~~and file Form GenReg, provided by the department or~~ with the department by filing a general business registration form available on the department's web site at ~~http://www.mt.gov/revenue and apply for a state~~ mtrevenue.gov or through the department's online transaction portal, from which the department will create a lodging facility sales and use tax account identification number for each facility owned or operated in Montana.

(2) A seller who is registering multiple accommodations locations and who has elected to file a combined lodging facility sales and use tax return may file one ~~application~~ registration listing separately each accommodations location. The combined return can only include ~~facilities~~ accommodations that are located:

(a) and (b) remain the same.

(3) ~~An application registering~~ A seller who is registering multiple accommodations locations must include the following information on each accommodations location:

(a) and (b) remain the same.

(4) A seller who is registering multiple accommodations locations in more than one county or CVB is required to complete a separate application for each county or CVB and include only those accommodations locations within the county or ~~recognized~~ CVB.

(5) A seller who has acquired an existing ~~facility~~ accommodation from a previous seller shall not use the predecessor's ~~state~~ lodging facility sales and use tax account identification number. The seller must ~~register and~~ file ~~Form GenReg~~ the registration described in (1) to obtain a new ~~state~~ lodging facility sales and use tax account identification number upon acquiring the existing business.

(6) A seller who establishes ~~a~~ new ~~facility~~ accommodations separate from ~~an~~ existing ~~facility~~ accommodations shall not use the existing lodging facility sales and use tax account identification number, except for those ~~owners or operators~~ sellers listed in (2). The ~~owner or operator~~ seller must register each ~~facility~~ accommodations separately and file ~~Form GenReg~~ the registration required in (1) to obtain a new ~~state~~ lodging facility sales and use tax account identification number before operating the new ~~facility~~ accommodations.

(7) When completing ~~Form GenReg~~ the registration required in (1), ~~each~~ a seller must provide the federal employer identification number assigned to them by the Internal Revenue Service. ~~For a sole proprietorship, this number may be a social security number if the sole proprietor is not required to apply for a federal employer identification number.~~ Any entity change for a seller that ~~requiring~~ requires a new federal employer identification ~~or social security~~ number requires a new ~~facility~~ registration.

(8) ~~No~~ A registration is not considered complete unless it contains the seller's federal employer identification or social security number ~~appears on the application~~.

(9) A seller who fails to register with the department ~~for reporting and remitting the lodging facility sales and use tax~~ is not relieved from the collection and reporting requirements.

AUTH: 15-65-102, 15-68-801, MCA
IMP: 15-65-114, 15-68-401, 15-68-402, MCA

42.14.113 SEASONAL REGISTRATION AND PERMIT (1) A ~~person~~ seller who is engaged in the business of selling ~~lodging~~ accommodations to the general public and is not open for business all 12 months of a calendar year may apply for a seasonal seller's permit.

(2) A ~~person may apply for a seasonal seller's permit by completing Form GenReg indicating~~ seller seeking a seasonal seller's permit must also provide in its registration, as required in ARM 42.14.106, that the business is seasonal and list~~ing~~ the calendar months the business operates.

(3) remains the same.

AUTH: 15-65-102, 15-68-401, 15-68-801, MCA
IMP: 15-65-112, 15-68-401, MCA

42.14.202 COMBINED CHARGE FOR SERVICES; DEPARTMENT INSPECTION OF RECORDS (1) When ~~lodging~~ sales of accommodations are combined with food, beverage, recreation, or other charges which are a substantial portion of the charge, the seller shall collect the lodging facility sales and use tax by establishing ~~an accommodation charge~~ a sales price using one of the following ~~methods~~ options:

~~(a) the allowable state reimbursement for the standard cost of in-state lodging each day for each person;~~

(b) and (c) remain the same but are renumbered (a) and (b).

(2) As required by 15-65-113, MCA, and 15-68-502, MCA, a seller must maintain and have available for inspection, records to substantiate ~~the items referred to in~~ (1)(a) ~~through (c)~~ or (b) for the preceding 5 years. The department may request the seller to ~~substantiate the method used and~~ itemize each charge to verify the correct amount of tax was collected and paid to the department.

(3) A seller must notify a purchaser of the lodging facility use tax and the lodging facility sales tax at the time of purchase. A seller shall separately state the taxes on the receipt, invoice, or other document provided to a purchaser to ensure there is a record of the amount of tax charged.

~~(3)~~ (4) Lodging facility sales and use taxes do not apply to separately stated charges ~~which are not an integral part of the use or occupancy of the room or campground space,~~ or fees unless a purchaser must pay the separately stated charge or fee to facilitate the sale or rental of the accommodations, including a fee or a service, commission, or other charge by any online hosting platform. Examples of separately stated charges not subject to the lodging facility sales and use tax ~~such as~~ include but are not limited to:

(a) through (h) remain the same.

~~(4)~~ (5) The department may disallow a seller's method of allocating the lodging facility sales and use tax under (1) if:

(a) the department has reasonable cause to believe that the method of allocation was chosen solely to qualify the facility for a tax exemption as provided in ARM ~~42.14.103~~ 42.14.303; or

(b) a charge allocated under (1)~~(c)~~ (b) is not supported by reasonable documentation or itemization.

~~(5)~~ (6) Lodging facility sales and use taxes include amounts charged for bathhouse facilities or ~~temporary~~ use of tangible personal property used in conjunction with the room, such as a charge for an extra bed.

(6) remains the same but is renumbered (7).

~~(7)~~ (8) If the ~~facility~~ seller charges for electricity or cleaning charges as a separate or additional charge, this charge must be included in the amount that is subject to the tax.

(9) Each seller shall maintain records necessary to document gross receipts for the lodging facility sales and use tax. A seller may be required to substantiate gross receipts reported for a particular quarter. For audit purposes, the seller may

be required to reconstruct the reported gross receipts from the original lodging facility sales and use tax receipts.

(10) Such records shall include specific documentation of exempt charges, including but not limited to sales generated through online hosting platforms and short-term rental marketplace. Documentation for centrally billed federal exemptions shall include the first six digits on each credit card used to pay for the accommodations. Documentation for long-term exempt accommodations may include the folio or similar documentation.

(11) The seller shall maintain the records for a period of five years and shall be subject to audit by the department for that period.

AUTH: 15-1-201,15-65-102, 15-68-801, MCA
IMP: 2-18-501, 15-65-111, 15-65-113, 15-68-102, 15-68-502, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.14.202 to clarify the rule's requirements, in particular to recordkeeping and department inspection. Cleaning charges are also proposed for addition in proposed (8) as a separate charge that is subject to the tax because separately stated, but mandatory, cleaning charges are often a part of the sales price. The department also proposes (9) through (11), which are relocated provisions from the current requirements in ARM 42.14.206.

42.14.203 COLLECTING, REPORTING, AND PAYING THE TAX ~~(1) A seller of a lodging unit located in Montana must collect the lodging facility sales and use tax from the user and file a return with the department as required in this rule, except for a seller exempt under ARM 42.14.303 and for sales exempt under ARM 42.14.304.~~

~~(2)~~ (1) Every seller, except for a seller ~~identified in (4)~~ who has obtained a seasonal permit, is required to complete and file ~~Form LFT~~ a lodging facility sales and use tax report with the ~~D~~department ~~of Revenue, P.O. Box 5835, Helena, MT 59604-5835,~~ for each calendar quarter or portion of a calendar quarter ~~in operation~~ they are open for business. The lodging facility sales and use tax report is available through the department's website at mtrevenue.gov or via the department's online transaction portal.

~~(3)~~ (2) ~~The~~ A seller shall remit the amount of the tax due concurrently with ~~Form LFT~~ filing the lodging facility sales and use tax report described in (1). The report will cover quarterly periods ending March 31, June 30, September 30, and December 31, and is due on or before the last day of the month following the close of the quarter. When filing electronically, the report and payment are considered filed on the confirmation date provided by the online transaction portal.

~~(4)~~ (3) A seller who has obtained a seasonal permit is required to ~~only~~ complete and file ~~Form LFT~~ a lodging facility sales and use tax report for the calendar quarters they are open~~ed~~ for business.

~~(5)~~ (4) If a seller has no revenue to report for a calendar quarter, and the seller does not have a seasonal permit, the seller must file a ~~quarter return~~ lodging

facility sales and use tax report but report~~ing~~ zero revenue and zero tax due for the calendar quarter.

~~(6) A seller who is required to file Form LFT may file and pay electronically their quarterly return through the department's web site at https://tap.dor.mt.gov. When filing electronically the return and payment is considered filed on the confirmation date provided upon submitting the return.~~

AUTH: 15-1-201, 15-65-502, 15-68-801, MCA
IMP: 15-1-208, 15-65-112, 15-65-115, 15-68-502, 15-68-513, MCA

42.14.205 APPLICATION OF TAX PAYMENT (1) All payments of the 4 ~~percent~~ lodging facility sales and use tax ~~and the 3 percent lodging facility sales tax~~ are applied by the department in the following manner:

(a) When the seller remits full payment of the taxes, ~~4/7~~ one-half of the amount is applied to the ~~4 percent~~ lodging facility use tax in Title 15, chapter 65, MCA, and ~~3/7~~ one-half of the amount is applied to the ~~3 percent~~ lodging facility sales tax in Title 15, chapter 68, MCA.

(b) When the seller remits less than full payment of the tax, the tax payment is first applied to the ~~4 percent~~ lodging facility use tax in Title 15, chapter 65, MCA, with any remaining balance being applied to the ~~3 percent~~ lodging facility sales tax.

(2) When a partial payment is made, the ~~5 percent~~ vendor allowance only applies to the paid tax balance of the lodging facility sales tax, after the payment is applied to the full amount of the ~~4 percent~~ lodging facility use tax due. If there are no funds available to apply to the ~~3 percent~~ lodging facility sales tax, the seller is not entitled to a vendor allowance.

(3) If the seller amends a prior period, or the department adjusts a prior period and the seller now owes additional tax, the original payment will be adjusted to first apply all tax to the ~~4 percent~~ lodging facility use tax, with any remaining balance to the ~~3 percent~~ lodging facility sales tax.

(4) When ~~reapplying~~ the department reapplies a payment, the vendor allowance will be adjusted to ~~5 percent of~~ the timely paid amount that is applied to the ~~3 percent~~ lodging facility sales tax.

AUTH: 15-1-201, 15-65-102, 15-68-801, MCA
IMP: 15-65-112, 15-68-502, 15-68-510, MCA

42.14.303 EXEMPT ~~LODGING FACILITIES~~ ACCOMMODATIONS AND ACCOMMODATIONS SALES (1) The following accommodations are exempt from the lodging facility sales and use tax:

(a) An occupant at a health care facility as that term is defined in 50-5-101, MCA is not required to pay the lodging facility sales and use tax.

~~(2)~~ (b) ~~A user of a lodging unit~~ A purchaser of accommodations at a dormitory is not required to pay the lodging facility sales and use tax when the:

~~(a)~~ (i) ~~P~~person is enrolled in a regular academic program or a program of continuing education; or

~~(b)~~ (ii) ~~P~~participant is in an education program to improve the work of the educational institution by developing the professional knowledge and skills of the employees of the institution hosting the program; or

~~(c)~~ (iii) ~~P~~participant is in an educational program reserved exclusively for students of accredited educational institutions.

~~(3) A user of a lodging unit at a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge (ADAC) is less than or equal to 60 percent of the allowable state reimbursement per day is not required to pay the lodging facility sales and use tax.~~

~~(a) For example - A facility that has 40 units advertises the following rates:~~

~~(i) 10 units, with one king bed, rent for:~~

~~$25.00 per night for single occupancy (one person);~~
~~$38.00 per night for double occupancy (two people);~~
~~$150.00 weekly rate; and~~
~~$400.00 monthly rate;~~

~~(ii) 30 units, with two queen beds, rent for:~~

~~$20.00 per night for single occupancy (one person);~~
~~$28.00 per night for double occupancy (two people);~~
~~$150.00 weekly rate; and~~
~~$400.00 monthly rate;~~

~~(iii) ADAC calculation:~~

~~10 units rent for $25.00/night~~		~~= $ 250.00~~	
~~30 units rent for $20.00/night~~		~~= $ 600.00~~	
~~Total rate charged for all rooms~~		~~= $ 850.00~~	
~~divided by number of units~~	~~40~~	~~= $ 21.25~~	~~ADAC~~

~~(iv) Allowable state reimbursement $ 35.00~~

~~7 percent Lodging Facility Sales and Use Tax~~	~~$ 2.45~~
~~Total~~	~~$ 37.45~~
~~60 percent of allowable state reimbursement~~	~~$ 22.45~~

~~(b) The ADAC rate of $21.25 is less than $22.45 (60 percent of the allowable state reimbursement rate), therefore the facility is exempt from collecting the lodging facility sales and use tax from the user.~~

~~(4)~~ (c) A ~~user~~ purchaser of accommodations at a nonprofit or religious organization~~'s facility~~ that is primarily used by youth (under the age of 18) for camping is not required to pay the lodging sales and use tax.

~~(5)~~ (d) The ~~user~~ purchaser of a camping area which is temporarily located pursuant to a permit issued by an agency of the U.S. government is not required to pay the tax.

(2) The following accommodations sales are exempt from the lodging facility sales and use tax:

(a) accommodations that are rented for a period of 30 consecutive days or more. Nonconsecutive rental agreements may not be combined to calculate a longer rental period. Accommodations rental for a period of 30 or more continuous days must be documented by a lease, contract, or historical evidence of continuous rental.

(b) when the sales price is billed directly to the federal government and paid directly by the federal government. A purchaser who is individually billed and pays

for accommodations, and who is subsequently reimbursed by the federal government, is not exempt from paying the lodging facility sales and use tax.

(c) when an enrolled member of a federally recognized Indian tribe stays in accommodations located within the exterior boundaries of the enrolled member's Indian reservation. The seller must record the individual's enrollment number on the record.

(d) when a foreign diplomat, entitled under international law or a bilateral treaty, presents to the seller a tax-exempt card issued by the U.S. State Department as follows:

(i) a blue stripe at the bottom indicates the bearer is entitled to full tax exemption; or

(ii) a yellow stripe indicates there is some type of restriction on the full tax exemption, which will be indicated in the yellow stripe area.

(e) when accommodations are used for a purpose other than lodging, such as a meeting room.

AUTH: 15-1-201, 15-65-102, 15-68-801, MCA
IMP: 2-18-501, 15-65-101, 15-65-111, 15-68-101, 15-68-102, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.14.303 through the consolidation of rule requirements which are proposed for minor revision and transfer from ARM 42.14.304 to proposed (2) of this rule. The result eliminates unnecessary redundancy in the department's rules regarding accommodations sales that are exempt from the lodging facility sales and use tax.

42.14.1002 REGISTRATION AND PERMIT FOR RENTAL VEHICLES SALES AND USE TAX (1) Every seller required to collect the rental vehicle sales and use tax must register ~~and file Form GenReg,~~ the business with the department by filing a general business registration form ~~provided by the department or~~ available on the department's web site at ~~http://www.revenue.mt.gov and apply for a state~~ mtrevenue.gov or through the department's online transaction portal, from which the department will create a rental vehicle account identification number for each location operating in Montana.

(2) A seller who has multiple locations or businesses in Montana may file one ~~application,~~ registration listing each location or business~~,~~ separately.

(3) A seller who has acquired an existing ~~facility~~ location or business from a previous owner shall not use the predecessor's ~~state~~ rental vehicle sales and use tax account identification number. ~~The seller must register and file Form GenReg to obtain a new state account identification number upon acquiring the existing business.~~

(4) A seller who establishes a new ~~facility~~ location or business separate from an existing ~~facility~~ location or business shall not use the existing rental vehicle sales and use tax account identification number. The seller must register each ~~facility~~ location or business separately ~~and file Form GenReg~~, as described in (1) or (2), as applicable, to obtain a new ~~state~~ rental vehicle sales and use tax account identification number before operating the new ~~facility~~ location or business.

(5) When completing ~~Form GenReg~~ the registration described in (1), ~~each~~ a seller must provide the federal employer identification number assigned to them by the Internal Revenue Service. ~~For a sole proprietorship, this number may be a social security number if the sole proprietor is not required to apply for a federal employer identification number.~~ Any entity change for a seller that ~~requiring~~ requires a new federal employer identification ~~or social security~~ number requires a new ~~facility~~ registration.

(6) ~~No~~ A registration described in (1) is not considered complete unless it contains the seller's federal employer identification or social security number ~~appears on the application~~.

(7) A seller who fails to register with the department ~~for reporting and remitting the rental vehicle sales and use tax~~ is not relieved from the collection and reporting requirements.

AUTH: 15-1-201,15-68-801, MCA
IMP: 15-68-401, 15-68-402, MCA

42.14.1003 SEASONAL REGISTRATION AND PERMIT (1) A ~~person~~ seller who is engaged in the business of renting motor vehicles to the general public and is not open~~ed~~ for business all 12 months of a calendar year may apply for a seasonal seller's permit.

(2) A ~~person may apply for a seasonal seller's permit by completing Form GenReg indicating~~ seller must indicate in its business registration, as required in ARM 42.14.1002, that the business is seasonal and list~~ing~~ the calendar months the business operates.

(3) remains the same.

AUTH: 15-68-401, 15-68-801, MCA
IMP: 15-68-401, MCA

42.14.1102 QUARTERLY RETURNS AND PAYMENTS (1) Every seller, except for a seller identified in ~~(3)~~(2), is required to complete and file ~~Form RVT or RVT-C~~ with the ~~D~~department ~~of Revenue, P.O. Box 5835, Helena, MT 59604-5835,~~ a rental vehicle sales and use tax return for each calendar quarter or portion of a calendar quarter ~~in operations~~ the seller is open for business. The rental vehicle sales and use tax return is available through the department's website at mtrevenue.gov or via the department's online transaction portal.

~~(2) The~~ A seller shall remit the amount of the tax due concurrently with ~~Form RVT or RVT-C. The report will cover quarterly periods ending March 31, June 30, September 30, and December 31, and is due~~ the rental vehicle sales and use tax return, as required in (1), on or before the last day of the month following the close of ~~the~~ a calendar quarter. When filing electronically, the report and payment are considered filed on the confirmation date provided by the online transaction portal.

~~(3)~~ (2) A seller who has obtained a seasonal permit under ARM 42.14.1003 is required to ~~only complete and file form RVT or RVT-C~~ comply with the requirements of (1) only for the calendar quarters they are open~~ed~~ for business.

~~(4)~~ (3) If a seller has no revenue to report for a calendar quarter, and the seller does not have a seasonal permit, the seller must still ~~file a quarter return~~ comply with the requirements of (1) and (2) but report~~ing~~ zero revenue and zero tax due for the quarter.

~~(5) A seller who is required to file Form RVT or RVT-C may electronically file and pay their quarterly return through the department's web site at https://tap.dor.mt.gov. When filing electronically the return and payment is considered filed on the confirmation date provided upon submitting the return.~~

AUTH: 15-1-201, 15-68-502, 15-68-801, MCA
IMP: 15-68-502, 15-68-513, MCA

42.14.1105 RECORDS REQUIRED - AUDIT (1) ~~Each~~ A seller shall maintain records necessary to document gross receipts for the rental vehicle sales and use tax. A seller may be required to substantiate gross receipts reported for a particular quarter. For audit purposes, ~~the~~ a seller may be required to reconstruct the reported gross receipts from the original rental vehicle sales and use tax receipts.

(2) ~~Such~~ The records described in (1) ~~shall~~ must include specific documentation of exempt charges.

(3) ~~The~~ A seller must notify ~~the user~~ a purchaser of the ~~4 percent~~ rental vehicle sales and use tax at the time of purchase.

(4) The tax shall be separately stated on the receipt, invoice, or other document provided to ~~the user~~ a purchaser to ensure there is a record of the amount of tax charged.

(5) The records described in (1) ~~shall~~ must be maintained by ~~the~~ a seller for a period of five years and shall be subject to audit by the department ~~for that period~~.

AUTH: 15-68-801, MCA
IMP: 15-68-502, 15-68-513, MCA

42.14.1201 RENTAL VEHICLES SALES SUBJECT TO THE TAX (1) A ~~user~~ purchaser is required to pay the rental vehicle sales and use tax on the sales price for a rental vehicle ~~used~~ rented in Montana. This includes, but is not limited to:

(a) through (f) remain the same.

(g) off-highway vehicles, including motorcycles, modified motorcycles including but not limited to those that attach skis or snowmobile tracks, quadricycles, dune buggies, amphibious vehicles, deriving power from any source other than muscle or wind; or

(h) a truck, trailer, or semi-trailer that has a gross vehicle weight of less than 22,000 pounds, used to transport personal property, such as a ~~flat bed~~ flatbed trailer used to transport machinery.

AUTH: 15-1-201, 15-68-801, MCA
IMP: 15-68-101, 15-68-102, 15-68-501, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.14.1201(1)(g) to include modified motorcycles as taxable for the rental vehicles sales and use tax. Based on the department's experiences with seller questions in this area, the proposed amendments are intended to clarify that these vehicles are subject to the rental vehicle sales and use tax.

42.14.1202 EXEMPT RENTAL VEHICLE ~~CHARGES~~ SALES (1) A ~~user~~ purchaser is not required to pay the rental vehicle sales and use tax on the rental of farm vehicles, machinery, equipment, travel trailers, motor homes, airplanes, snowmobiles, golf carts, or ~~sail boards~~ sailboards.

(2) The following rental vehicle sales are exempt from the rental vehicle sales and use tax:

(a) ~~A user is not required to pay the rental vehicle sales and use tax when the~~ a vehicle that is rented to the same user for a period of 30 consecutive days or more. Nonconsecutive rental agreements cannot be combined for the purpose of determining the length of the rental period. Intention to rent for a period of 30 or more continuous days is documented by a lease, contract, or historical evidence of continuous rental.

~~(3)~~ (b) ~~The federal government is not required to pay the rental vehicle sales and use tax if~~ when the rental charge is billed directly to the federal government and paid directly by the federal government. A charge that is individually billed and paid by the user, who later is reimbursed by the federal government, is not exempt from the rental vehicle sales and use tax.

~~(4)~~ (c) when ~~A~~an enrolled member of a federally recognized Indian tribe~~, who~~ rents a vehicle within the exterior boundaries of the enrolled member's Indian reservation~~, does not have to pay rental vehicle tax~~. The seller must record the individual's enrollment number on the record.

~~(5)~~ (d) when ~~A~~a foreign diplomat, entitled under international law or a bilateral treaty~~, does not have to pay the rental vehicle tax upon showing of~~ presents to the seller a tax-exempt card issued by the U.S. State Department as follows:

(a) and (b) remain the same but are renumbered (i) and (ii).

~~(6) The isolated rental of vehicles by a person who is not regularly engaged in the business of renting vehicles is not required to collect the rental vehicle sales and use tax from the user~~.

AUTH: 15-1-201, 15-68-801, MCA
IMP: 15-68-101, 15-68-102, MCA

5. The department proposes to repeal the following rules:

42.14.206 RECORDS REQUIRED - AUDIT

AUTH: 15-65-102, 15-68-801, MCA
IMP: 15-65-113, 15-68-502, 15-68-513, MCA

42.14.207 FAILURE TO FURNISH REQUESTED INFORMATION

AUTH: 15-65-102, 15-68-801, MCA
IMP: 15-65-113, 15-65-115, 15-68-502, MCA

42.14.302 WHO MUST PAY THE TAX

AUTH: 15-65-102, 15-68-801, MCA
IMP: 2-18-501, 15-65-101, 15-65-111, 15-65-112, 15-68-101, 15-68-102, 15-68-501, MCA

42.14.304 EXEMPT LODGING SALES

AUTH: 15-65-102, 15-68-801, MCA
IMP: 15-65-101, 15-65-111, 15-68-101, 15-68-102, 15-68-206, MCA

42.14.1001 DEFINITIONS

AUTH: 15-68-801, MCA
IMP: 15-68-101, MCA

42.14.1101 WHO MUST COLLECT THE TAX FROM THE USER AND FILE RETURNS

AUTH: 15-68-801, MCA
IMP: 15-68-101, 15-68-102, 15-68-501, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than December 20, 2021.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 52, Senator Ellsworth, was contacted by email on October 29, 2021.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State November 9, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2014 pertaining to maintenance of active and inactive voter registration lists for elections	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 10, 2021, at 9:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., December 2, 2021, to advise us of the nature of the accommodation that you need. Please contact Ray Dagnall, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-9009; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail RDagnall@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall~~, in every odd-numbered year~~ follow the procedures in 13-2-220, MCA every year.

(2) An election administrator performing the procedures outlined in 13-2-220(1)(a) or (b), MCA, in the month of January also satisfies the requirements of 13-13-212(4)(b), MCA.

AUTH: 13-2-108, MCA
IMP: 13-2-220, 13-13-212, MCA

REASONABLE NECESSITY: On April 8, 2021, the Governor of Montana signed into law Senate Bill (SB) 170. SB 170 revised laws related to maintenance of active and inactive voter registration lists for elections. The Office of the Secretary of State is proposing changes to ARM 44.3.2014 to reflect the changes in statute. In addition, the proposed amendment provides clarification as to the coordination of related statutes in response to concerns noted during legislative hearings.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena,

Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. A written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to the office at sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Senator Kary, was contacted by phone on November 7, 2021.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 9th day of November, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the registration of a person who employs a paid signature gatherer	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 10, 2021, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., December 2, 2021, to advise us of the nature of the accommodation that you need. Please contact Ray Dagnall, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-9009; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail RDagnall@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I REGISTRATION OF EMPLOYERS OF PAID SIGNATURE GATHERERS (1) A person who employs a paid signature gatherer shall submit a complete registration form to the Secretary of State's Office prior to collecting signatures on a ballot issue. The registration form is available at sosmt.gov or upon request from the Secretary of State's Office.

(a) A separate registration form is required for each ballot issue.

(b) The registration form must contain contact information for the employer and a list of all persons employed to gather signatures for that ballot issue. If additional persons are employed after the registration form is submitted, an amended form must be submitted.

(c) The filing fee for registration is $0.

AUTH: 13-27-202, MCA
IMP: 13-27-202, MCA

REASONABLE NECESSITY: On May 14, 2021, the Governor of Montana signed into law House Bill (HB) 651. HB 651 revised laws related to ballot initiatives including a requirement for registration of employers of paid signature gatherers. The Office of the Secretary of State is proposing New Rule I to implement the changes in statute.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these changes will not have a fiscal impact and no persons will be affected.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. A written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to the office at sosarm@mt.gov.

8. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Representative Bertoglio, was contacted by phone on November 7, 2021.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 9th day of November, 2021.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.174.301 definitions, 24.174.524 collaborative practice agreement requirements, 24.174.835 transfer of prescriptions, 24.174.1111 drug distribution and control in an institutional or correctional facility, 24.174.1114 use of drug kits in certain institutional facilities, 24.174.1412 additions, deletions, and rescheduling of dangerous drugs, 24.174.2106 registered pharmacist continuing education–approved programs, and the repeal of 24.174.1115 use of contingency kits in certain institutional facilities	)))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 27, 2021, the Board of Pharmacy published MAR Notice No. 24-174-74 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1026 of the 2021 Montana Administrative Register, Issue No. 16.

2. On September 16, 2021, a public hearing was held on the proposed amendment and repeal of the above-stated rules via the videoconference and telephonic platform. Four comments were received by the September 24, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Numerous commenters supported the amendments to the collaborative practice agreement requirements in ARM 24.174.524 because the proposed changes align the rule with current national recommendations and clarify previously unclear language.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Several commenters expressed support for the revisions to drug kits, ARM 24.174.1114, and amendments reflecting ongoing discussions and input between the board and stakeholders.

RESPONSE 2: The board appreciates all comments received during the rulemaking process.

COMMENT 3: Several commenters supported the amendments to ARM 24.174.1412 to align with multiple drug scheduling changes made by the U.S. Drug Enforcement Administration, including the removal of Epidiolex, an FDA-approved cannabidiol drug, from Schedule V and the corresponding removal of barriers for patients.

RESPONSE 3: The board appreciates all comments received during the rulemaking process.

COMMENT 4: Several commenters supported the revisions to continuing education approved programs for pharmacists in ARM 24.174.2106, and supported the process being simplified for organizations providing continuing education.

RESPONSE 4: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.174.301, 24.174.524, 24.174.835, 24.174.1111, 24.174.1114, 24.174.1412, and 24.174.2106 exactly as proposed.

5. The board has repealed ARM 24.174.1115 exactly as proposed.

BOARD OF PHARMACY
TONY KING, RPh
PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 9, 2021.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.174.401 and the adoption of New Rules I through III pertaining to dispenser registration for medical practitioners	)))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 24, 2021, the Board of Pharmacy(board) published MAR Notice No. 24-174-76 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1164 of the 2021 Montana Administrative Register, Issue No. 18.

2. On October 15, 2021, a public hearing was held on the proposed amendment and adoption of the above-stated rules via the videoconference and telephonic platform. Several comments were received by the October 22, 2021, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Numerous commenters expressed support for the board's process in drafting rules, including outreach and engagement of stakeholder involvement, for the proposed amendments and new rules. Commenters also supported the requirements for dispensing medical practitioners to follow the same patient safety standards that pharmacists and pharmacies are already required to meet in Montana.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Several commenters indicated they do not believe that the rules are unduly burdensome for medical practitioners and that the board thoughtfully crafted the rules to promote patient safety.

RESPONSE 2: The board appreciates all comments received during the rulemaking process.

COMMENT 3: Many commenters generally supported NEW RULE II but asked the board to amend (1)(c) to allow medical practitioners to dispense using mail or common carrier delivery methods. The commenters stated that the board provided no justification for not allowing other delivery models to accommodate patient comfort, circumstances, and telehealth services, and that the board offered no

reason or evidence that patient safety would be at additional risk by allowing other delivery models.

RESPONSE 3: The board determined that it lacks the authority to allow mail or common carrier as delivery options for medical practitioner dispensing because the authorizing statute, 37-2-104(2)(a), MCA, specifically provides that drugs dispensed by a medical practitioner must be dispensed directly by the practitioner at the practitioner's office or place of practice. The board further concluded that a legislative change would be required for such a provision.

COMMENT 4: Several commenters indicated that naturopathic physicians are not included in the proposed rule because they are not included in the statutory definition of a medical practitioner and that a future legislative amendment is being considered.

RESPONSE 4: The board does not have authority to address in rulemaking the exclusion of naturopathic physicians from those medical practitioners allowed to dispense drugs per 37-2-101(7) and 37-2-104, MCA, and agrees that a legislative change would be required.

4. The board has amended ARM 24.174.401 exactly as proposed

5. The board has adopted New Rule I (24.174.1801), New Rule II (24.174.1802), and New Rule III (24.174.1803) exactly as proposed.

BOARD OF PHARMACY
TONY KING, RPh
PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.404 department of livestock brands enforcement division fees and 32.18.109 freeze branding	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Department of Livestock published MAR Notice No. 32-21-318 regarding the proposed amendment of the above-stated rules at page 1186 of the 2021 Montana Administrative Register, Issue Number 18.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.8.101 pertaining to fluid milk and Grade A milk products	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Department of Livestock published MAR Notice No. 32-21-319 regarding the proposed amendment of the above-stated rule at page 1189 of the 2021 Montana Administrative Register, Issue Number 18.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.8.202 pertaining to time from processing that fluid milk may be sold for public consumption	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Department of Livestock published MAR Notice No. 32-21-320 pertaining to the proposed amendment of the above-stated rule at page 1192 of the 2021 Montana Administrative Register, Issue Number 18.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered any comments and testimony received. A summary of one comment received, and the department's response is as follows:

COMMENT #1: The Montana Milk Producers Association (MMPA) is writing to express support for the proposed amendments to ARM 32.8.202. There are two primary reasons that MMPA supports this proposal.
1) MMPA supports the "dual dating" concept of providing a sell by date and a "use by" date for consumers. MMPA believes that the decision of whether to add a "use by" date to packaged fluid milk should be left at the discretion of the processor.
2) The proposed amendment to insert the language "as packaged" is a reasonable method of ensuring that only fresh packaged milk is sold while providing flexibility for those who may use packaged fluid milk in additional processing or other areas of their business that extends beyond the "sell by" date.

RESPONSE #1: The department thanks the Montana Milk Producers Association for their comment.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.403 pertaining to diagnostic laboratory fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 8, 2021, the Department of Livestock published MAR Notice No. 32-21-322 regarding the proposed amendment of the above-stated rule at page 1269 of the 2021 Montana Administrative Register, Issue Number 19.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

BY: /s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.34.3005 and 37.86.3607 pertaining to developmental disabilities program provider rates update	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 25, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-949 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 748 of the 2021 Montana Administrative Register, Issue Number 12.

On September 10, 2021, the department published an amendment to MAR Notice No. 37-949 pertaining to a second public hearing on the proposed amendment of the above-stated rules at page 1120 of the 2021 Montana Administrative Register, Issue Number 17.

2. Because differences exist between the original rule amendment as proposed and as here adopted, the department now explains why it amended the original rule as proposed. The Children, Families, Health, and Human Services Interim Committee (committee) objected to portions of MAR Notice No. 37-949 in its entirety because of the allocation and methodology used to apply provider rate increases and direct care recruitment and retention amounts. The department amended the proposed rates included in the Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver for Eligible Individuals Age 16 and Over Manual and the Montana Developmental Disabilities Program Services Manual, adopted by rule, to allocate provider rate increases and direct care recruitment and retention increases per legislative direction. Upon this amendment to the manuals, the committee withdrew its objection.

3. The department has amended the above-stated rules as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter asked about the label for the provider rate increase (PRI) in House Bill (HB) 2 indicating a 1%/2% increase in rates, noting the numbers and math show the increase to be 1.5%/2.8%. The commenter asked if the rule change should indicate 1.5% and not approximately 1%.

RESPONSE #1: Based on clarification of HB2, the department amended the developmental disabilities waiver rates to reflect an average weighted provider rate increase of 1.9% for State Fiscal Year (SFY) 2022. Rates are also increased by an additional 0.8% on average with the allocation of $1,004,294 for direct care recruitment and retention. Total developmental disabilities provider rates are increased by approximately 2.7% for SFY2022.

COMMENT #2: A commenter asked about the rule change indicating a fiscal impact of the PRI as $1,354,154 yet the allocation in HB2 shows $3,820,537 as the value of the PRI in the first year of the biennium and asked that the difference in numbers be explained.

RESPONSE #2: The HB2 appropriation for the Disability Services Division includes both the Medicaid developmental disabilities waiver and Children's Mental Health Bureau (CMHB) services. The $3,820,537 in the Medicaid PRI line of HB2 includes both the developmental disabilities waiver provider rate increase and also the provider rate increases for CMHB services listed in HB2. Based on clarification of HB2, the department amended the developmental disabilities waiver provider rates. This resulted in updating the fiscal increase to $2,460,636 for PRI and to $1,004,294 for direct care recruitment and retention which was also allocated through provider rates.

COMMENT #3: Another commenter asked if there is a reason that rates can only be published for a single year of the biennium despite the budget and increase already having been set by the legislature.

RESPONSE #3: The provider rate increase is based on appropriation amounts and the percent increase is not known until caseload expenditures from the prior year are considered. Additionally, the Medicaid developmental disabilities waiver rate increase includes an addition for the direct care recruitment and retention amounts; it will not be known what the set appropriation amount will calculate or translate to as a percentage until the prior year is considered because prior year expenditures are the basis/denominator in rate setting.

COMMENT #4: One commenter asked about the possibility of a breakdown of the rates in the service manual to indicate which portion of the change in rate comes from which allocation line in HB2 and which portion of the rate is allocated from the direct support professional recruitment and retention funding.

RESPONSE #4: Provider rates on a weighted average basis were increased by 1.9% for provider rate increases, and 0.8% for direct care recruitment and retention funding. The allocation of both the provider rate increases and the direct care recruitment and retention funding can be reviewed in the amended notice of MAR Notice No. 37-949.

COMMENT #5: One commenter stated that the rule change discusses the implementation of a FY22 $1,106,482 allocation for Direct Support Professional

recruitment and retention funding. The commenter asked the department to explain what is meant by a $.24/hour rate increase, how this was determined, and how the $.24 added to the rates.

RESPONSE #5: Based on clarification of HB2 and comments during the initial rule process, the implementation of the direct care recruitment and retention was expanded to more services and then implemented similar to the PRI.

COMMENT #6: Another commenter asked if this portion of the funding is intended to be good only for FY22 and the second amount for FY23.

RESPONSE #6: The legislature could choose to adjust appropriation during the next biennium, but the department will include it as part of future caseload projections as an ongoing expenditure. The department will include the funding as an ongoing budget expenditure in caseload projections for the next legislative cycle.

COMMENT #7: The department received a few comments asking how the services were determined to receive this portion of funding. There was specific concern about several of the employment and transportation related services not being included.

RESPONSE #7: Based on clarification of HB2 and comments during the initial rule process, the implementation of the direct care recruitment and retention increase was expanded to more services and implemented similar to the PRI. All services received the direct care recruitment and retention funding except the following:

Individual Goods and Services
Remote Monitoring Equipment
Specialized Medical Equipment and Supplies
Environmental Modifications
Personal Emergency Response System
Community Transition Services

The following services were updated pursuant to their established Medicaid State Plan rate methodologies:

Private Duty Nursing (Medicaid State Plan) LPN
Private Duty Nursing (Medicaid State Plan) RN
Psychological Services
Physical Therapy (Medicaid State Plan)
Occupational Therapy (Medicaid State Plan)
Speech Therapy (Medicaid State Plan)
Nutritionist Services (Medicaid State Plan)

COMMENT #8: Another commenter asked if this rule, or any future rule, would fund bonuses for workers other than the waiver workers and if so, please explain.

RESPONSE #8: The amendment of ARM 37.34.3005 is limited to developmental disabilities waiver services and providers of those services.

5. The department intends to apply these rules retroactively to July 1, 2021. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 9, 2021.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.85.105 pertaining to updating Medicaid provider rates, fee schedules, and effective dates	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 8, 2021, the Department of Public Health and Human Services published MAR Notice No. 37-957 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1272 of the 2021 Montana Administrative Register, Issue Number 19.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The Montana Hospital Association submitted a comment of support and appreciation regarding transparency of the rate setting process.

RESPONSE #1: The department appreciates the comment and looks forward to continuing our valuable relationship.

4. The department intends to apply these rules retroactively to October 1, 2021. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State November 9, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2711 pertaining to poll watchers at places of deposit	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Secretary of State published MAR Notice No. 44-2-245 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1198 of the 2021 Montana Administrative Register, Issue Number 18.

2. On October 14, 2021, a public hearing was held on the proposed amendment of the above-stated rule.

3. No comments or testimony were received.

4. The Secretary of State has amended ARM 44.3.2711 as proposed.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 9th day of November, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.2010 pertaining to eligibility of applicants to be issued and cast a ballot	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Secretary of State published MAR Notice No. 44-2-247 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1202 of the 2021 Montana Administrative Register, Issue Number 18.

2. On October 14, 2021, a public hearing was held on the proposed amendment of the above-stated rule.

3. No comments or testimony were received.

4. The Secretary of State has amended ARM 44.3.2010 as proposed.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 9th day of November, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.3.313 pertaining to notification requirements for emergency rules under the Montana Administrative Procedure Act	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2021, the Secretary of State published MAR Notice No. 44-2-248 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1204 of the 2021 Montana Administrative Register, Issue Number 18.

2. On October 14, 2021, a public hearing was held on the proposed amendment of the above-stated rule.

3. No comments or testimony were received.

4. The Secretary of State has amended ARM 1.3.313 as proposed.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 9th day of November, 2021.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.3.307, 1.3.309, and 1.3.312 pertaining to legislative oversight of administrative rules	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 8, 2021, the Secretary of State published MAR Notice No. 44-2-249 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1306 of the 2021 Montana Administrative Register, Issue Number 19.

2. On October 28, 2021, a public hearing was held on the proposed amendment of the above-stated rules.

3. No comments or testimony were received.

4. The Secretary of State has amended ARM 1.3.307, 1.3.309, and 1.3.312 as proposed.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 9th day of November, 2021.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2021. This table includes notices in which those rules adopted during the period May 28, 2021, through November 5, 2021, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2021, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2021 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-11-614 Adoption of a State Plan of Operation for Federal Surplus Property, p. 378, 990

2-59-613 Examination Fees - Revocation and Suspension of Mortgage Licenses - Consumer Complaints - Confidentiality Agreements - Sharing Arrangements - Reinstatement of Expired or Suspended Licenses - Mortgage Loan Origination Disclosure Form - Bona Fide Not-For-Profit Certification - Applications for Initial Licenses Near Year End, p. 381, 715

2-59-617 Semiannual Assessments - Supervisory Fees for Banks and Credit Unions, p. 1004, 1319

2-59-618 Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Loan Originators, p. 1007, 1320

(State Lottery and Sports Wagering Commission)

2-63-621 Definitions - Places of Sale - Applications and Fees - Commission - Revocation or Suspension of License - Prizes, p. 1441

(Burial Preservation Board)

2-65-620 Permits for Scientific Analysis, p. 1092, 1546

AGRICULTURE, Department of, Title 4

4-21-273 Certified Noxious Weed Free Materials, p. 804, 1048

STATE AUDITOR, Office of, Title 6

6-264 Suitability in Annuity Transactions Act, p. 971, 1206
6-265 Pharmacy Benefit Manager Definitions and Network Adequacy, p. 1352

(Classification Review Committee)
6-263 Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, p. 447, 919

COMMERCE, Department of, Title 8

8-94-187 Administration of the Montana Coal Endowment Program (MCEP)–Planning Grants, p. 591, 872
8-94-189 Administration of the Community Development Block Grant Cares Act (CDBG-CV) Program, p. 813, 1049
8-94-190 Administration of the CDBG Program, p. 976, 1208
8-94-191 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1357
8-111-188 Cash Advances, p. 815, 1053

EDUCATION, Title 10

(Montana State Library)
10-102-2101 Essential Standards - Library Board, Governance, and Working With the Director - Serving the Community - Personnel - Standard Notification, Final Arbiter, and Appeal Process - Deferrals, p. 818, 1138

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-548 Closing the Selway Park Fishing Access Site in Beaverhead County, p. 756
12-549 Closing Cooney Reservoir in Carbon County, p. 873
12-550 Closing Holter Lake From the Point of Log Gulch Campground to Holter Dam in Lewis and Clark County, p. 1054

(Fish and Wildlife Commission)
12-541 Policy Regarding the Management of Black Bear, p. 389, 920
12-545 Use of Deer or Elk Urine to Mask Human Odor, p. 391, 921
12-546 Implementation of the Commercial Use Cap on the Madison River, p. 395, 923

ENVIRONMENTAL QUALITY, Department of, Title 17

(Petroleum Tank Release Compensation Board)
17-416 Eligibility Determination for Petroleum Storage Tank Cleanup, p. 1095

TRANSPORTATION, Department of, Title 18

18-184 Motor Carrier Services Safety Requirements, p. 450, 875
18-185 Utility Relocation Costs, p. 1360
18-186 Courtesy Car Grant Applications, p. 1445

JUSTICE, Department of, Title 23

23-12-261 Tracking Sexual Assault Evidence Kits Through a Statewide Sexual Assault Kit Tracking System, p. 727, 1056
23-16-260 Transfer of Interest Among Licensees and to New Owners - Shake-a-Day Games - Changes in Managers - Sports Pools and Sports Tabs - Electronic Player Rewards Systems - Procedure on VGM Malfunction - Use of AARS Data for Player Tracking, p. 1449
23-18-262 Certificates of Public Advantage, p. 453, 758

(Public Safety Officers Standards and Training Council)
23-13-260 Certification of Public Safety Officers, p. 4, 616

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

24-2-373 Commissioner's Active Supervision of the Board of Dentistry Regarding Designation of Public Health Facilities for Limited Access Permits, p. 731
24-11-372 COVID Unemployment Insurance Benefits, p. 534, 759
24-11-375 Disqualification for Unemployment Insurance Benefits Due to Failure or Refusal of a Drug Test - Requalification, p. 1011, 1404
24-13-386 Montana HELP Act Workforce Development Services, p. 1461
24-17-380 Prevailing Wage Rates for Public Works Projects, p. 1259
24-21-378 Montana's Registered Apprenticeship Program - Recognition of Pre-Apprenticeship Programs, p. 1098, 1547
24-21-385 Apprenticeship Ratios, p. 1465
24-29-367 Medical Fee Schedules for Workers' Compensation Purposes, p. 397, 716
24-29-371 Medical Utilization and Treatment Guidelines for Workers' Compensation Purposes, p. 536, 761
24-29-374 Workers' Compensation Petitions for Reopening, p. 978, 1210
24-35-376 Independent Contractors, p. 1109
24-101-311 Requirements for Sexual Offender Evaluation Endorsement, p. 1468

24-122-2 Creation of a Limited Low-Pressure Boiler Operating Engineer's License - Incorporation by Reference of Boiler and Pressure Vessel Code - Fees, p. 1113, 1552

24-142-3 Elevator Licensing Program - Fee Schedule - Continuing Education Credits Required - Continuing Education Sponsors and Courses, p. 1117

24-148-1 Licensure of Genetic Counselors, p. 1477

24-301-353 Modifications to the International Building Code Applicable to Both the Department's and Local Government Code Enforcement Programs, p. 596, 1216

(Board of Personnel Appeals)

24-26-377 Practices, Procedures, and Grievances Before the Board of Personnel Appeals, p. 1105, 1551

(Board of Architects and Landscape Architects)

24-114-39 Fee Schedule, p. 733, 1406

(Board of Barbers and Cosmetologists)

24-121-17 Salons - Shops - Mobile Salons or Shops - Schools - Definitions - General Application and License Display Requirements - Variance Requests - General Requirements and Prohibitions - License General Information - Premises, Fixtures, and General Sanitation - Restrooms - Sinks - Sanitizers - Containers - Cabinets - Implements - Instruments - Supplies - Equipment - Sanitizing - Disinfecting - Preparation Storage - Handling - Prohibited Items - Blood Spills - Continuing Education Instructors - Unprofessional Conduct - Inspections - Name Change - Closure - Change of Ownership - Operation Standards - Lighting, p. 826

(Board of Chiropractors)

24-126-38 Impairment Evaluator Standards - Participation in Disaster and Emergency Care–Liability of Chiropractor - Applications, p. 736, 1554

(Board of Dentistry)

24-138-81 Fee Schedule - Approved Clinical Exam Criteria for Dentists and Dental Hygienists - Dental Hygiene Local Anesthetic Agent Certification, p. 1472

(Board of Medical Examiners)

24-156-91 Audit and Continuing Education Reporting Requirements - Continuing Education Audit, p. 456, 1057

24-156-92 Definitions - ECP Licensure Qualifications - ECP License Application - Continued Competency Requirements - Fee Schedule - Fees - Final Pre-Licensing Examinations, p. 1482

(Board of Nursing)

24-159-89 Definitions - Fees - Qualifications for Executive Director of the Board - Nurse Licensure Compact Rules - Program Standards - Program Annual Report - Establishment of a New Program - Program Director - Program Faculty - Waiver of Faculty Qualifications - General Requirements for Licensure as Medication Aide I and II - Prohibited Intravenous (IV) Therapies - Temporary Practice Permit - LPN and RN Licensure by Examination for Internationally Educated Applicants - Licensure by Endorsement - Renewals - Application for Prescriptive Authority - Prescribing Practices - APRN Competence Development - Purpose - Criteria for Delegation of Nursing Tasks - General Nursing Functions and Tasks That May Not Be Delegated - Conduct of Nurses - Grounds for Denial of a License, p. 673, 991

(Board of Occupational Therapy Practice)

24-165-25 Definitions - Deep Modality Endorsement, p. 593, 1321

(Board of Outfitters)

24-171-41 Fees - Outfitter Records - Outfitter's Assistants - Safety and First Aid Provisions - Application for Outfitter License - Outfitter Qualifications - Fishing Outfitter Operations Plan - Insurance for Outfitters - Outfitter Acting as Guide - Operations Plans and Amendments - NCHU Categories, Transfers, and Records - Renewals - Unprofessional Conduct and Misconduct - Web Site Posting of License Discipline, p. 1014, 1407

(Board of Pharmacy)

24-174-74 Definitions - Collaborative Practice Agreement Requirements - Transfer of Prescriptions - Drug Distribution and Control in an Institutional or Correctional Facility - Use of Drug Kits in Certain Institutional Facilities - Additions, Deletions, and Rescheduling of Dangerous Drugs - Registered Pharmacist Continuing Education–Approved Programs - Use of Contingency Kits in Certain Institutional Facilities, p. 1026

24-174-76 Dispenser Registration for Medical Practitioners, p. 1164

24-174-77 Waiving the Pharmacist to Pharmacy Technician Ratio for Vaccine Activities and COVID-19 Testing - Allowing Any Licensed Health Care Provider Authorized to Administer Vaccines Within Their Scope of Practice to Assist Pharmacists in Administering Vaccines, p. 1211

(Board of Physical Therapy Examiners)

24-177-36 Examinations - Unprofessional Conduct, p. 1263

(Board of Professional Engineers and Professional Land Surveyors)

24-183-44 Definitions - Teaching of Land Surveying Subjects - Continuing Professional Competency–Continuing Education, p. 401, 1215

(Board of Psychologists)

24-189-42 Fee Schedule - Required Supervised Experience - Continuing Education Requirements - Continuing Education Implementation - Representation of Self and Services - Psychologist Application Procedures - Licensure as a Psychologist by Experience (Senior), p. 740, 1058

(Board of Public Accountants)

24-201-54 Board Organization - Definitions - Firms–Registration - Nonroutine Applications - Board Meetings - Committees - Cheating - Introduction - Renewals, p. 1170

(Board of Real Estate Appraisers)

24-207-45 Incorporation by Reference of the Real Property Appraiser Qualification Criteria, p. 845, 1322

(Board of Realty Regulation)

24-210-46 Fee Schedule - Unprofessional Conduct - Citations and Fines - Prelicensing Education–Salespersons and Brokers - Continuing Real Estate Education - Continuing Property Management Education - New Licensee Mandatory Continuing Education–Salespersons, p. 2296, 619

24-210-47 Fee Schedule - Trust Account Requirements - Unprofessional Conduct for Property Management Licensees - Reasonable Supervision - High Level of Supervision, p. 848

(Board of Behavioral Health)

24-219-36 License Requirements for Clinical Social Workers (LCSW), Licensed Master's Social Workers (LMSW), Licensed Baccalaureate Social Workers (LBSW), Licensed Clinical Professional Counselors (LCPC), Licensed Marriage and Family Therapists (LMFT), and Licensed Addiction Counselors (LAC) - Examination–LAC - Professional Counselor Licensure Candidate Requirements - Continuing Education Requirements, p. 1176

LIVESTOCK, Department of, Title 32

32-21-317 Diagnostic Laboratory Fees, p. 599, 925

32-21-318 Brands Enforcement Division Fees - Freeze Branding, p. 1186

32-21-319 Fluid Milk and Grade A Milk Products, p. 1189

32-21-320 Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 1192

32-21-321 Scope of Rules, p. 1267

32-21-322 Diagnostic Laboratory Fees, p. 1269

(Board of Milk Control)

32-21-316 Definitions - Regulation of Unfair Trade Practices - Reports and Records - Payments to Pool Producers and Adjustment of Accounts, p. 539, 763

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-200 Oil and Gas Leases on State Lands, p. 459, 993
36-22-212 Categorical Exclusion of the State Revolving Fund Grant Issuance Under the Montana Environmental Policy Act, p. 889, 1323

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-942 Low Income Weatherization Assistance Program, p. 405, 621
37-943 Hospice Fee Schedule, p. 462, 764
37-944 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 687, 853, 1324
37-945 Fees for Copies of Birth Certificates - Amendment of Birth Certificate Gender Designations - Issuance of a Replacement Certificate, p. 608, 926
37-946 Youth Care Facility Requirements, p. 700, 1217
37-948 Nursing Facility Reimbursement, p. 711, 1139
37-949 Developmental Disabilities Program Provider Rates Update, p. 748, 1120
37-950 Marijuana Testing Laboratory Licensure, p. 859, 1059
37-951 Low Income Energy Assistance Program (LIEAP), p. 862, 1060
37-952 Licensed Marriage and Family Therapist, p. 981, 1232
37-953 Youth Foster Homes, p. 893, 1233
37-955 Allowing for COVID-19-Related Regulatory Discretion Beyond the Expiration of the Governor-Declared State of Emergency, p. 932
37-956 School Immunization Requirements, p. 984, 1328
37-957 Updating Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 1272
37-958 Severe and Disabling Mental Illness, p. 1124, 1555
37-959 Child Care Licensing, p. 1277
37-960 Allowing Students and/or Their Parents or Guardians the Ability to Opt-Out of School Health-Related Mandates for Health, Religious, Moral, or Other Fundamental Rights Reasons, p. 1141
37-961 Public Participation, p. 1290
37-963 Comprehensive School and Community Treatment, p. 1490
37-964 Waiver of Swing-Bed Requirements, p. 1330
37-965 Health Emergency Waiver, p. 1294
37-966 Optometric Services Rates, p. 1364
37-968 Montana Telecommunications Access Program, p. 1500
37-969 Big Sky Rx Benefit, p. 1504

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-248 Commission Procedural Rules, p. 545, 937
38-2-249 Department's Procedures for Collecting Fees and Other Charges, p. 1194
38-3-249 Montana's Motor Carrier Act, p. 1037, 1556
38-5-248 Advanced Metering Opt-Out, p. 111, 896
38-5-251 Pipeline Safety, p. 1507
38-5-252 Utility Electricity Voltage, p. 1510

REVENUE, Department of, Title 42

42-1030 Montana Medical Marijuana Program, p. 765
42-1031 Montana Medical Marijuana Program (MMP), p. 899, 1147
42-1032 Marijuana Provider Canopy Tier Size Increases - Limitations on Advertising, p. 908, 1127, 1333
42-1033 Implementation of the Montana Marijuana Regulation and Taxation Act, p. 1369
42-1034 Production Increments Used in the Calculation of Taxes on Beer, p. 869, 1061
42-1035 Elimination of Competitive Bid Application Processing Fees, p. 915, 1152
42-1036 Property Tax Assistance Program (PTAP) and the Montana Disabled Veteran (MDV) Property Tax Assistance Program, p. 1044, 1409
42-1037 Temporary Operating Authority for Alcoholic Beverage License Applicants, p. 1132
42-1038 2022 Personal Property Depreciation Schedules and Trend Tables - Updated Business Equipment Exemption, p. 1301
42-1039 Debtor Appeals of Department Collections, p.1399
42-1040 Implementation of Compliance and Enforcement Requirements of the Montana Marijuana Regulation and Taxation Act - Local-Option Marijuana Excise Taxation, p. 1513
42-1041 Innovative Education Program Donations to School Districts and Student Scholarship Organizations (SSO), p. 1530
42-1042 Medical Marijuana Program Rules - Implementation of the Montana Marijuana Regulation and Taxation Act, p. 1534

SECRETARY OF STATE, Office of, Title 44

44-2-242 Clarification of Business Services Division Filings and Fees, p. 550, 767
44-2-243 Records and Information Management Fees, p. 613, 878
44-2-244 Scheduled Dates for the 2022 Montana Administrative Register, p. 1135, 1410
44-2-245 Poll Watchers at Places of Deposit, p. 1198
44-2-246 Testing of Vote Tabulation Machines, p. 1200
44-2-247 Eligibility of Applicants to Be Issued and to Cast a Ballot, p. 1202

44-2-248 Notification Requirements for Emergency Rules Under the Montana Administrative Procedure Act, p. 1204
44-2-249 Legislative Oversight of Administrative Rules, p. 1306
44-2-250 Voter Registration Requirements - Provisional Registration - Late Registration Procedures - Voter Identification - Related Definitions, p. 1309

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in October 2021 appear. Potential vacancies from December 1, 2021 through February 28, 2022, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2021.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Water Well Contractors			
Mr. Andy Eslinger	Governor	New	10/1/2021
Corvallis			6/30/2023
Qualifications (if required): Water well contractor			
Historic Preservation Review Board			
Mr. Frank LaLiberty	Governor	Bronson	10/1/2021
Cascade			9/30/2025
Qualifications (if required): Public member with an interest in historic preservation			
Pulse Crop Committee			
Mr. Brian Akelstad	Governor	Johnson	10/7/2021
Galata			6/30/2024
Qualifications (if required): At large representative			
Mr. Ryan Bogar	Governor	reappointed	10/7/2021
Vida			6/30/2024
Qualifications (if required): Member from Eastern District			
Mr. Todd Hansen	Governor	New	10/7/2021
Gildford			6/30/2024
Qualifications (if required): At large representative			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
State Emergency Response Commission			
Ms. Angel Becker Lame Deer Qualifications (if required): Tribal emergency response	Governor	Nelson	10/1/2021 9/30/2025
Mr. Charlie Brereton Helena Qualifications (if required): Representative of Governor's Office	Governor	Graybill	10/1/2021 9/30/2025
Mr. Mike Gehl Missoula Qualifications (if required): Trucking industry representative	Governor	Mulcahy	10/1/2021 9/30/2025
Mr. Steve Lavin Boulder Qualifications (if required): Representative of the Dept. of Justice	Governor	Butler	10/1/2021 9/30/2025
Mrs. Stephanie Jean Ler Savage Qualifications (if required): Public health related association	Governor	LaPan	10/1/2021 9/30/2025
Col. Michael Moreni Fort Harrison Qualifications (if required): National Guard representative	Governor	Holycross	10/1/2021 9/30/2025

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
State Emergency Response Commission Cont.			
Mr. Jayson Olthoff	Governor	Olson	10/1/2021
Great Falls			9/30/2025
Qualifications (if required): Insurance industry representative			
Ms. Jennifer Staton	Governor	Kimball	10/1/2021
Billings			9/30/2025
Qualifications (if required): Montana hospital representative			
State Rehabilitation Council			
Mr. John Gorton	Governor	Kimmet	10/21/2021
Helena			9/30/2024
Qualifications (if required): Office of Public Instruction Representative			
Ms. Jean Schroeder	Governor	Taylor	10/21/2021
Vaughn			9/30/2024
Qualifications (if required): Parent organization representative			
Mr. Brian Tocher	Governor	Faulkner	10/21/2021
Butte			9/30/2024
Qualifications (if required): Advocacy community representative			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2021

Appointee	Appointed By	Succeeds	Appointment/End Date
Statewide Independent Living Council			
Ms. Molly Kimmel	Governor	Berg	10/7/2021
Missoula			11/30/2024
Qualifications (if required):	Designated State unit representative, Ex Officio		
Mr. Michael Mandhardt	Governor	Davis	10/7/2021
Missoula			11/30/2024
Qualifications (if required):	Person with disability not employed by a state agency or Center for Independent Living		
Mr. Brent Allen Morris	Governor	Beers	10/7/2021
Billings			11/30/2024
Qualifications (if required):	Person with disability not employed by a state agency or Center for Independent Living		
Mr. Joel Peden	Governor	Morris	10/7/2021
Helena			11/30/2024
Qualifications (if required):	Person with disability employed by a state agency or Center for Independent Living		
Ms. Allyson Talaska	Governor	Trerise	10/7/2021
Missoula			11/30/2024
Qualifications (if required):	Vocational rehabilitation representative and agency representative		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
Board of Chiropractors		
Dr. Gregory L. Pisk, Kalispell	Governor	1/1/2022
Qualifications (if required): Licensed Chiropractor		
Board of Horse Racing		
Senator Dale Mahlum, Missoula	Governor	1/1/2022
Qualifications (if required): Horseracing Industry		
Mr. Gary William Koepplin, Florence	Governor	1/1/2022
Qualifications (if required): District 5		
Mr. Shawn Real Bird, Crow Agency	Governor	1/1/2022
Qualifications (if required): District 2		
Board of Public Assistance		
Ms. Sharon Bonogofsky-Parker, Billings	Governor	1/5/2022
Qualifications (if required): Public member		
Ms. Danielle Shyne, Bozeman	Governor	1/5/2022
Qualifications (if required): Attorney member		
Board of Public Education		
Ms. Darlene Schottle, Bigfork	Governor	2/1/2022
Qualifications (if required): District 1 Independent		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
Board of Regents of Higher Education		
Mr. Robert Nystuen, Lakeside	Governor	2/1/2022
Qualifications (if required): District 1, Independent		
Judicial Nominations Commission		
Mrs. Nancy Zadick, Great Falls	Governor	1/1/2022
Qualifications (if required): Lay member who is not a judge or attorney, active or retired		
Montana Alfalfa Seed Committee		
Mr. Dallas Dale Steiger, Hysham	Governor	12/1/2021
Qualifications (if required): Actively engaged in the growing of alfalfa seed within the state		
Mr. Justin Lee Wiese, Malta	Governor	12/1/2021
Qualifications (if required): Actively engaged in the growing of alfalfa seed		
Montana Arts Council		
Ms. Cynthia L. Andrus, Bozeman	Governor	2/1/2022
Qualifications (if required): Public Representative		
Mr. John Paul Gabriel Jr., Bozeman	Governor	2/1/2022
Qualifications (if required): Public Representative		
Ms. Tracy Linder, Molt	Governor	2/1/2022
Qualifications (if required): Public Representative		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
Montana Arts Council Cont.		
Ms. Elizabeth Albers, Missoula	Governor	2/1/2022
Qualifications (if required): Public Representative		
Dr. Renee Westlake, Bozeman	Governor	2/1/2022
Qualifications (if required): Public Representative		
Montana Children's Trust Fund Board		
Ms. Tracy Moseman, Helena	Governor	1/1/2022
Qualifications (if required): State government agency involved in education		
Mr. James Scott Wheeler, Kalispell	Governor	1/1/2022
Qualifications (if required): Member		
Ms. Patricia Butler, Helena	Governor	1/1/2022
Qualifications (if required): State government agency involved in social work		
Ms. Kristina A. Davis, Great Falls	Governor	1/1/2022
Qualifications (if required): Member		
Montana Grass Conservation Commission		
Mr. Richard Louis Stuker, Chinook	Governor	1/1/2022
Qualifications (if required): Member who holds active grazing preference rights within a state district		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
Montana Small Business Development Center Advisory Council		
Mr. Paddy Fleming, Bozeman Qualifications (if required): Economic Development Professional	Governor	2/1/2022
Mr. Reed W. Bassett, Great Falls Qualifications (if required): Small Business Lender	Governor	2/1/2022
Mr. Karl Drga, Miles City Qualifications (if required): Small Business Lender	Governor	2/1/2022
Mr. Joe Fanguy, Missoula Qualifications (if required): Economic Development Professional	Governor	2/1/2022
Mr. Matt Harrington, Browning Qualifications (if required): Small Business Owner	Governor	2/1/2022
Ms. Debbie Singer, Billings Qualifications (if required): Economic Development Professional	Governor	2/1/2022
Mr. Joe Willauer, Butte Qualifications (if required): Economic Developer	Governor	2/1/2022
State Employee Group Benefits Advisory Council		
Director Sheila Hogan, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
State Employee Group Benefits Advisory Council Cont.		
Representative Jim Keane, Butte	Governor	12/31/2021
Qualifications (if required): Legislature Representative		
Ms. Penny Fassett, Helena	Governor	12/31/2021
Qualifications (if required): Executive Branch Representative		
Ms. Diane Fladmo, Helena	Governor	12/31/2021
Qualifications (if required): State Employees and labor organizations		
Ms. Susan Fox, Helena	Governor	12/31/2021
Qualifications (if required): Legislative Branch		
Ms. Cheryl Grey, Helena	Governor	12/31/2021
Qualifications (if required): Executive Branch Representative		
Mr. Jim Lewis, Helena	Governor	12/31/2021
Qualifications (if required): Retired State Employees' Representative		
Mr. Quint Nyman, Helena	Governor	12/31/2021
Qualifications (if required): State Employees and Labor Organizations		
Mr. Duane Preshinger, Helena	Governor	12/31/2021
Qualifications (if required): Ex-Officio member representing the Department of Administration		
Ms. Amy Sassano, Helena	Governor	12/31/2021
Qualifications (if required): Executive Branch Representative		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
State Employee Group Benefits Advisory Council Cont.		
Mr. Derek Shepherd, Helena Qualifications (if required): Judicial Branch	Governor	12/31/2021
Ms. Samantha Chase, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Ms. Peggy MacEwen, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Mr. George Mathieus, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2021
Ms. Michelle Wheat, Helena Qualifications (if required): State Employees and Labor Organizations	Governor	12/31/2021
State Lottery Commission		
Mr. John Tarr, Helena Qualifications (if required): Public Representative	Governor	1/1/2022
Mr. Thomas M. Keegan, Helena Qualifications (if required): Member	Governor	1/1/2022
Ms. Jean L. Price, Great Falls Qualifications (if required): Public Representative	Governor	1/1/2022

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder	Appointed By	Term End
Statewide Independent Living Council		
Ms. Barbara Louise Davis, Missoula	Governor	12/1/2021
Qualifications (if required): Person with a disability not employed by a state agency		
Mr. Thomas Henry Thompson, Missoula	Governor	12/1/2021
Qualifications (if required): Person with a disability		
Dr. Julie Melissa Lane Tudor, Three Forks	Governor	12/1/2021
Qualifications (if required): Person with a disability		
Ms. Beverly Ann Berg, Great Falls	Governor	12/1/2021
Qualifications (if required): Designated State Unit Representative		
Mr. Richard Scott Williamson, Ronan	Governor	12/1/2021
Qualifications (if required): Person with a disability employed by a state agency		
Ms. Lisa L. Allensworth, St. Marie	Governor	12/1/2021
Qualifications (if required): Representing a person with a disability		
Ms. June Guenzler Hermanson, Helena	Governor	12/1/2021
Qualifications (if required): Person with a disability		
Mr. Brent Allen Morris, Billings	Governor	12/1/2021
Qualifications (if required): Person with a disability		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2021 THROUGH FEBRUARY 28, 2022

Board/Current Position Holder		Appointed By	Term End
Traumatic Brain Injury Advisory Council			
Mr. Ian Ray Elliot, Billings			
Qualifications (if required):	Advocate for Brain Injured Persons	Governor	1/1/2022
Dr. Braxton Norwood, Kalispell			
Qualifications (if required):	Representative of injury control	Governor	1/1/2022

MONTANA ADMINISTRATIVE REGISTER

2021 ISSUE NO. 22
NOVEMBER 19, 2021
PAGES 1569-1712

CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620